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FOURTH ANNUAL REPORT

OF THE

Board of Railroad Commissioners

OF THE

State of Montana

Year Ending November 30, 1911

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Helena, Montana, Nov. 30, 1911.

To His Excellency, HON. EDWIN L. NORRIS,

Governor.

In accordance with Section 4396, Revised Codes, we have the honor to submit herewith, Annual Report, containing an account of all matters pertaining to this Department for the year ending November 30th, 1911.

Respectfully,

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

B. T. STANTON, Chairman.
E. A. MORLEY,
D. BOYLE,
Commissioners.

R. F. McLAREN, Secretary.

PREFACE.

Report has not been made herein of cases pending. All unfinished investigations, and all matters before the Board, as well as complaints brought by this Commission before the Interstate Commerce Commission, not concluded on this date, will appear in Annual Report for 1912.

Copy of this report will be mailed free upon request.

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PART I.

STATION AND TRAIN SERVICE.

BEFORE THE RAILROAD COMMISSION OF MONTANA

THEODORE NELSON and BEAVERHEAD RANCH COMPANY, a corporation,

Complainants,

vs.

OREGON SHORT LINE RAILROAD CO.,

Defendant.

IN THE MATTER OF Establishing an Agency and Providing Station Facilities at Bond, Montana.

HEARING, August 16-17th, 1910.
DECIDED, December 10th, 1910.

REPORT AND ORDER OF THE COMMISSION.

Number 41.

Complainants in this case represent the citizens of that portion of Beaverhead county, and aver that the defendant has failed or neglected to provide station facilities and the services of an agent at Bond station, which is logically the most advantageous shipping point in the northern part of that county; and further that there is sufficient business tributary to that station to warrant their request.

H. G. Rodgers, for Complainants,

J. L. Wines, for Defendant.

Morley, Commissioner.

Bond is situated at a point on the Oregon Short Line Railroad six miles by rail and eight and one-half miles by wagon road, north from Dillon, Montana, and about six miles by rail and nine and one-half miles by wagon road south from Apex, Montana. At both Dillon and Apex the defendant maintains an open station; that is, with an agent in charge.

Testimony was introduced to show that on account of the topography of the country, Bond was the natural loading point for persons living north of a line drawn midway between Dillon and Bond, and comprising a territory extending east and west upward of ten miles and north to a point near Apex, as the latter is at the top of the hill, making delivery at that station, from the south, very difficult.

The territory mentioned is thickly settled and is becoming more so every year. It is highly productive, and for hay, grain and other farm products is one of the principal sections in that part of the state. Stock raising is also an industry of moment in that locality, but no shipments have been made from Bond for the reason that no facilities have ever been provided; making it necessary to drive to more distant points where stock yards are located.

An unusual condition exists, making shipping under present circumstances difficult. When a shipper needs a car, he is, under O. S. L. rules, required to drive to Dillon and place his order, as no orders are received by telephone, and when car is loaded and ready to go forward he must make another trip to Dillon to furnish billing instructions, as conductors will not move cars from sidings without proper billing. In addition to this, other difficulties arise, as the shippers who have orders in for cars do not know when the cars are set in, to whom they rightfully belong by reason of priority of orders. A general scramble ensues, and first possession is the law. Shippers living any distance from Bond are thus greatly handicapped, and at times haul to Dillon 8.5 miles, rather than take chances of waiting indefinitely to be supplied with cars.

It was also shown that many passengers board the trains at Bond, and that during inclement weather they are obliged to wait without shelter, or even a platform, and without any knowledge of when the train will arrive. Many people drive to Dillon and board the train at that point, rather than undergo the hardships of waiting under the conditions mentioned.

As stated above, a large per cent of the products from the territory adjacent to Bond, is hauled to either Dillon or Apex where there are shipping facilities; nothwithstanding which the defendant shows that the freight revenue on out-going shipments loaded at Bond during calendar year 1909, was $3,-232.70.

For the erection of a station building and the installation of standard equipment, the railroad company presented figures to show that the same would cost $11,067.17. The Commission does not consider such facilities necessary, and the complainants do not ask for them; simply suitable pens for the loading of stock and such a station building and equipment as will

afford shelter to passengers and protection to freight, baggage and express.

NOW THEREFORE, being as fully informed on the subject as is possible from the testimony of both plaintiffs and defendant, and from our personal knowledge of the commercial, physical and other conditions,

IT IS HEREBY ORDERED that the said Oregon Short Line Railroad Company shall, as soon as possible, and not later than February 1st, 1911, provide suitable stock yards, station building and appurtenances, and shall place an agent in charge thereof, for the proper conduct of an open station for both freight and passenger business, and at least one passenger train daily in each direction shall stop at said station.

If the said Railroad Company prefers to do so, it will be agreeable that old box car bodies be used in lieu of buildings, same to be suitably fitted up for their respective purposes.

This order shall remain in effect until the further order or approval of this Commission; provided, however, that after one year from February 1st, 1911, if the defendant can show by verified figures that the volume of business transacted at said station does not warrant its continuance, then this Commission will authorize that the station be closed.

BY ORDER OF THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Helena, Montana, December 10th, 1910.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAIROAD COMMISSION OF MONTANA.

P. D. Reed, et al,
vs.
Great Northern Railway Company.

IN THE MATTER OF Petition by the Citizens of Rudyard and Vicinity to require the Great Northern Railway Company to establish an Agency and Maintain a freight and passenger depot at Rudyard, on the main line of the defendant company.

HEARING, November 22nd, 1910.
DECIDED, January 11th, 1911.

REPORT AND ORDER OF THE COMMISSION.

Number 42.

This complaint originated with a letter received by the Commission September 20th, 1910, from P. D. Reed, Vice-President of the Reed Townsite Company of Rudyard, in which he requests that the Great Northern Railway Company be required to provide a depot building at Rudyard, Montana, and place an agent in charge thereof. The Great Northern Railway Company having declined to grant this informal request of the petitioners, a formal complaint signed by the said P. D. Reed, and eight other residents of Rudyard and vicinity, was filed with the Commission on October 3rd, 1910, making practically the same request as of Sept. 20th.

The answer of the defendant company under date of November 1st, alleges that the earnings at Rudyard, would not warrant the expense of establishing a depot and installing an agent, and prays that the proceeding be dismissed. A public hearing was held in accordance with our Rules of Practice, at Rudyard, November 22nd;

REPRESENTED:

Petitioners	By P. D. Reed,
	" H. S. Robinson,
	" T. P. Ulman,
	" A. J. Sanford,
	" P. H. Beagle,
	" D. G. Rathbone,
	" Albert Bystuem.
Defendant	By T. F. Lowry, Supt.
Commissioners	Stanton and Boyle.

The testimony presented at the hearing showed that during the Spring and Summer months of 1910, there was a large emigration into northern Montana, along the line of the Great Northern Railway, and to handle this business, the railway company had constructed a number of unloading tracks for the convenience of carload shipments of emigrant movables, lumber, etc., and in addition, had provided station buildings and installed agents every 10 or 12 miles. There is at the present time a depot and agent at Hingham, six miles east of, and at Inverness, 6.2 miles west of Rudyard.

From the evidence adduced at this investigation, it appears that the population of Rudyard proper is less than 50, and that there are from 60 to 100 additional inhabitants in the townships north and south of the town. There are four mercantile houses, two lumber yards and two saloons in Rudyard. The passenger train service is satisfactory to the people, there being a local train operated daily between Havre and Shelby, and from seven to ten passengers daily patronizing said train to and from Rudyard.

While the revenue collected by the railway company on consignments to this point during the few months that the emigrant movement was at its height, was sufficient to warrant the maintenance of a depot and agency, the normal business would not justify the expense of such maintenance and employe. It is, however, the opinion of the Commission that the citizens of Rudyard and vicinity, are entitled to better facilities than are now provided by the defendant for both passenger and freight service, and that the present method of the defendant does not afford to the complainants such service as the law contemplates as being reasonable and adequate.

IT IS THEREFORE ORDERED that the Great Northern Railway Company shall, on or before April 1st, 1911, provide at Rudyard, Mont., a suitable platform for the convenience of passengers, and shall also provide a building of sufficient dimensions to afford shelter to persons awaiting the arrival of trains, and for the protection and care of such shipments of merchandise and other freight as may be consigned to that station, and

IT IS FURTHER ORDERED that the defendant shall employ a custodian for said building, whose duty it shall be to see that the said building is heated and lighted when necessary,

and open to the ingress and egress of passengers at least one-half hour before the arrival and after the departure of trains, and the defendant shall instruct its employes to place all less than carload shipments in said building, and that the same must not be left on the platform or unloaded at any other point along the right of way.

The Secretary is directed to serve upon the said Great Northern Railway Company, a true and certified copy of this report and order.

BY ORDER OF THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Dated January 11th, 1911.

(Signed.) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA

BRADY, Citizens of,

Complainants,

vs.

GREAT NORTHERN RAILWAY CO.,

Defendant.

IN THE MATTER OF Providing Station Facilities at Brady, and placing an Agent in Charge thereof.

HEARING, November 30th, 1910.
DECIDED, January 23rd, 1911.

REPORT AND ORDER OF THE COMMISSION.

Number 43.

This petition alleges that the Great Northern Railway Company has failed to fulfil its obligations as a common carrier, in that the amount of business transacted at that station is sufficient to warrant a depot and the services of an agent, which the defendant has neglected and refused to furnish.

REPRESENTED:

Great Northern Railway Co.	By C. O. Jenks, Div. Supt.
	" W. S. Herman, Trav. F. & P. A.
Complainants	By T. O. Larson,
	" Alex Truchot.
	" C. K. Malone,
	" T. M. Quamme,
	" J. B. Peterson,
	" G. W. Bulmer,
	" Richard Waldron.
Commissioners	Morley and Boyle.

Brady is a station located on the Great Falls-Shelby Branch of the Great Northern Railway, in Teton County; the nearest agency being Collins 10.18 miles south, and Conrad 13.3 miles north, that is, between Collins and Conrad the distance is 23.48 miles, without an open station, and freight shipments destined to Brady, unless the charges are prepaid, are either put off at Collins or taken through to Conrad. From there, the consignee must haul his goods by team. There are approximately two hundred families in Brady and the territory tributary thereto.

Figures were submitted by the defendant to show that the average revenue on freight and passenger business, both received and forwarded at Brady, was $789.00 per month for the past four months, and for the year the monthly average was

$1,019.00. During the months of April, May and June, 1910, the earnings were much above the average, as large quantities of lumber and other material for the elevators, as well as stocks of merchandise were being shipped in during that period.

Complainants testified that a large per cent of the freight business destined to Choteau (an inland town), the county seat, would be billed to Brady if the latter were an open station and equipped to properly take care of the business, instead of to Collins or Conrad as at present; Brady being located about half way between the two, and the most advantageous point from which delivery of a large portion of "Bench" freight would be made. Therefore, with the services of an agent, the revenue of Brady station would be greatly increased beyond the figures mentioned above. Superintendent Jenks stated that his recommendations for 1911 improvement work, included "some facilities for Brady," but could not say, of course, what action would be taken.

At the time of this hearing, testimony shows that there were twenty-five hundred acres actually seeded in winter wheat, within a radius of four miles of Brady, and if the north part of Burton Bench were included, it would be hard to make an estimate, but it would mean a good many thousand acres, possibly twenty to thirty thousand. In addition, from one thousand to fifteen hundred acres were all ready for Spring seeding; this, outside of the Burton Bench, all tributary to Brady, and a considerable portion of the product would naturally be handled through the elevators at that point. Of course, these shippers would prefer to have their incoming freight billed to Brady, so that they could haul grain one way and other freight in the opposite direction; on the same principle that a railroad company figures, whenever possible, to avoid "running light."

Another condition which is a considerable factor in this matter is the fact that heretofore the vast extent of open country in that section of Teton County has permitted the use of temporary cross country roads to Collins and Conrad, whereas during the past two years the land has been taken up by homesteaders and fenced in many places, necessitating the abandonment of these trails and adhering to the regularly established highways on section lines, making the trips to Collins or Conrad more arduous than formerly, and enhancing the need for the facilities which the complainants here seek to establish.

Brady is almost due east following the section line from the north side of Burton's Bench, and would therefore, appear to be the logical shipping point for that immense agricultural tract.

Thirty-six pages of testimony taken at this hearing shows in addition to the conditions hereinbefore cited, that Brady is no exception to the many evils attending a prepay station, where there is no one to look after the business, and no means of obtaining information as to furnishing cars for loading, the arrival or departure of freight and express, and the numerous details of minor matters. The Commission is aware that there are many stations where the services of an agent would be a great convenience to the people, and many petitions have been made to this Department praying that the respective railroads be compelled to provide better facilities for the conduct of its business, but in view of the partial failure of the crops in Montana last year, and the resultant falling off in earnings of the carrier companies on local business, the Commission has been loath to require that additional expense be incurred; on the contrary it would seem as though the railroads would be justified in further curtailing their cost of operation, but in the case of Brady, the needs of the people are so apparent, and considering the immense area of contiguous territory as referred to in this report,

IT IS HEREBY ORDERED, that the said Great Northern Railway Company shall, not later than May first, 1911, provide a suitable depot and platform at Brady, Montana, for the accommodation of passengers and for the protection of freight, baggage and express; and upon completion of said depot, and not later than May first, 1911, shall place an agent in charge thereof. The said Great Northern Railway Company shall submit to this Commission plans of the proposed station building, for approval, before work is started thereon.

The Secretary is directed to serve upon the Great Northern Railway Company, a true and certified copy of this Order, and the same shall remain in effect until the Commission has authorized its discontinuance.

BY ORDER OF THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Helena, Montana, January 23rd, 1911.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

SOMERS, MONTANA, Residents of,
vs.
GREAT NORTHERN RAILWAY COMPANY,

IN THE MATTER OF Alleged Insufficient accommodations for passengers at Somers.

HEARING, March 8th, 1911.
DECIDED, April 28th, 1911.

REPORT OF THE COMMISSION.

Number 44.

This complaint which is dated November 9th, 1910, but not set for hearing until March 8th, 1911, at request of petitioners, alleges an unsatisfactory condition existing at Somers, Montana, by reason of the defendant's depot being located at the dock south of the town proper, and therefore inconvenient to the people of Somers and the public generally.

REPRESENTED:

Complainants	By Hon. Fred Whiteside.
	" X. K. Stout, Counsel.
Defendants	By W. N. Noffsinger, Counsel.
	" W. R. Smith, Div. Supt.
	" J. T. McGaughey, A. G. F. & P. A.
Commissioners	Morley and Boyle.

HEARING at Somers, March 8th, 1911.

Petitioners' prayer for relief asks that the defendant be required to provide a waiting room opposite the town of Somers, so that passengers will not be obliged to wait outside, and that said waiting room be heated and lighted when weather conditions are such as to make this necessary. It was apparent, however, from the nature of the testimony presented at the hearing, that what was really wanted, was not merely a waiting room, but that the railway company should provide necessary facilities for the transaction of all business, freight, passenger and express, at some convenient location to be agreed upon, in the town of Somers proper, and thus eliminate the present practice of walking or driving to the depot, approximately three quarters of a mile further.

Counsel for defendant interposed an objection to this line of testimony, on the ground that such facilities were not solicited in the original complaint, and were not contemplated in defendant's answer thereto, nor was the defendant prepared at that time to discuss the merits or demerits of the suggested rearrangement. The testimony was allowed to go into the records, to be taken into consideration only in so far as it might be relevant to the specific allegations of the petition.

Somers is the terminus of the Flathead Branch of the Great Northern Railway, and is situated on the shore of Flathead Lake. The chief industry, and it might be said the only industry, is the mills of the Somers Lumber Company, a subsidiary corporation, we understand, of the Great Northern Railway,whose business consists almost exclusively of carload shipments, and can be handled perhaps to better advantage from the depot at its present site. Defendant's depot for the handling of freight and passengers, is located, as stated above, at the dock where direct connection is made with all boats plying the lake. There appears to be no question but that the present location of the depot and the offices of the defendant's agent, is best adapted for the handling of business "over the lake," and which according to the testimony, represents the greater portion. It therefore follows that if the conditions at Somers are such as to require an "up-town" depot and agency, it would mean the maintenance and operation of two such depots and agencies in a place of perhaps less than one thousand inhabitants. That question, however, is not a part of the pleadings in this complaint, and is not, therefore, before the Commission at this time.

The actual distance from the suggested location for a waiting room to the present depot on the lake shore, is thirty-two hundred feet, accessible by two wagon roads, both of which are over and upon the property of the Somers Lumber Company, and are not therefore, "public highways" in the general acceptation of the term. The "west" road is through the milling district, and is reserved by the said lumber company for its exclusive use. The "east" road, however, is to all intents and purposes, a public thoroughfare and may be used as such without interference. This east road is almost as direct a route to the depot as the main track of the defendant's railroad, and there appears to be little if any necessity for passengers tres-

passing upon the tracks or right of way of the railway company between the depot and the town, which complainants have cited as an element of extreme danger.

The Commission's authority in such cases is vested in Section 4382, Revised Codes of Montana, providing: "The Board shall have the power, and it shall be its duty to compel any and all railroads subject hereto, to provide, maintain and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public, and to provide and maintain suitable waiting rooms for passengers, and suitable rooms for freight, and baggage at all stations."

NOW, THEREFORE, having taken all of the testimony and conditions into consideration, and being, we believe, fully informed on the subject matter of this complaint, the Commission is unanimously of the opinion that while the facilities of the defendant at Somers are not all that could be desired, the resultant inconveniences are not such as to warrant formal action being taken at this time.

The proceedings are hereby dismissed.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Dated Helena, Montana, April 28th, 1911.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA

HARRISON, Residents of and Vicinity,
Complainants,

vs.

NORTHERN PACIFIC RAILWAY CO.,
Defendant.

IN THE MATTER OF Installing an Agent at Harrison station, in Madison County, on the Pony & Norris Branch of the Northern Pacific Railway.

HEARING, May 17th, 1911.
DECIDED, July 5th, 1911.

REPORT OF THE COMMISSION.

Number 45.

The usual inconvenience of a non-agency station were cited in this complaint, and alleged that with the development of the territory contiguous to Harrison during the past few years, the business now being transacted at that station, was of sufficient volume to warrant the services of an agent, and that the present year would show a material increase.

REPRESENTED:

Complainants	By J. S. Black.
Defendant	By C. L. Nichols, Gen'l Supt.
	" A. V. Brown, Div. Supt.
	" W. H. Merriman, D. F. & P. A.
Commissioners	Stanton, Morley and Boyle.

Hearing at Harrison, May 17th, 1911.

The Pony & Norris Branch connects with the Butte line of the defendant at Sappington, Harrison is distant from Sappington 9.5 miles, and there the branch divides for Pony and Norris, 6.3 and 11.1 miles respectively, from Harrison Junction. Agencies are maintained at Sappington, Pony and Norris. The train service over this branch line is "mixed, daily except Sunday."

Many witnesses, mostly ranchmen, testified as to the acreage under cultivation in territory tributary to Harrison, the product of which would naturally be shipped from that station. Witnesses also estimated the number of bushels of grain, potatoes,

etc., and the tonnage of hay, that might reasonably be expected this season. None of the witnesses, however, had any compilation of figures to show the acreage of the Harrison Valley, and their testimony on that point, it might be said, was merely a guess. These estimates varied, in the judgment of the complainants, from 14,000 to 36,000 acres. Testimony of this nature is of no value to the Commission, while at the same time, the amount of land producing crops for shipment is in our opinion, one of the controlling factors in this case.

It is probably true, as testified, that more land has been broken each year and at the present time there are more families living in the district than in former years, but this fact does not involve the conviction that the reasonableness of the prayer of the complainants for an agency is thereby established.

We will not attempt to relate in this report, the numerous complaints presented, covering minor items of loss and damage on less than carload shipments consigned to Harrison, but would merely state that the greater portion of these undoubtedly occurred at transfer points or in transit, and would not have been avoided by the presence of an agent at that station. It is true, of course, that the patrons of the railroad as well as the carrier itself, would be spared the annoyance of petty pilfering after shipments had been unloaded from the cars, and in the Fall when grain and hay is being shipped out in carload lots, an agent would be of assistance in the securing of empty cars for this business. But the question to be determined is, has Harrison reached that point where the facilities of the railway company should be increased to the extent of this petition?

Defendant presented in evidence an exhibit showing the tonnage and revenue of that station for twelve months ending December 31st, 1910, amounting to $9,646.21, an average of $803.85 per month. Freight forwarded, figures a little more than two-thirds of the total, or $6,815.58, and of this amount, fifty-four per cent. represents the business done in the months of October and November. In other words the average gross revenue for this twelve month period, on freight forwarded, exclusive of October and November, was only $311.87, which it would seem to the Commission, was convincing testimony that with the exception of these two months, the position of the defendant was well taken, that the services of an agent

were not warranted, based on the earnings of the past year.

Mr. C. L. Nichols, General Superintendent, testified for the defendant, that the question of opening Harrison station with an agent in charge, had been given careful consideration, and under date of July 2nd, has agreed with the Commission to install an agent September 1st, to continue through until December 31st, 1911, after which date, if the business has not developed sufficiently to warrant the continuance of an open station, same will be closed.

The Commission feels that this is all that can reasonably be expected in view of the conditions.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Dated Helena, Montana, July 5th, 1911.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA

WILLIS, MONTANA, Residents of, and certain business men of BUTTE, MONTANA,

Complainants,

vs.

OREGON SHORT LINE RAILROAD CO.,

Defendant.

IN THE MATTER OF Petition to Compel the Defendant to Stop its Passenger trains in Both Directions at Willis.

HEARING, July 26, 1911.
DECIDED, September 5, 1911.

REPORT AND ORDER OF THE COMMISSION.

Number 48.

Hearing held at Willis, July 26th, 1911.

REPRESENTED:

Defendant	By J. L. Wines, Counsel.
	" E. C. Manson, Gen'l Supt.
	" W. R. Armstrong, Div. Supt.
Complainants	By John Strasser, et al. (Not represented by counsel.)
Commissioners	Stanton and Morley.

Section 4382 of the Revised Codes of Montana makes it the duty of this Commission to compel any and all railroads to provide, maintain and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public, and this petition alleged that by its refusal to stop its passenger trains at Willis, "Reasonable accommodations to the public" had been denied by this defendant.

Willis is located on the main line of the Oregon Short Line Railroad approximately fifty miles south of Butte, and at one time the railway company had a regularly established station at that point, but these facilities were moved approximately one and one-fourth miles north to what is now known as Glen station, a number of years ago, for the purpose of expediting the movement of trains on the hill, according to the testimony of witnesses for defendant. This left Willis without any station accommodations, but the practice of stopping passenger

trains at the old location was continued, at least when there were people to get on or off, until April 28th, 1911, on which date an order of the defendant went into effect, under the terms of which no further stops would be made.

There is no agent of the railroad company at Glen, neither is there a depot or other shelter for passengers waiting for trains, while at Willis, there is a hotel, store and postoffice with telephone connections, where travelers may await with some degree of comfort. It also developed that in order to reach Glen, on account of the location of bridges across the river, one must pass directly by the hotel and other buildings at Willis; and continue about a mile and a half further to Glen station, where, as stated above, there is no protection from the elements and no means of communication by telephone or otherwise.

Testimony of witnesses showed that with possibly one or two exceptions, the entire population of the surrounding country would be better served if the station were located at Willis, but this petition does not request that the station be changed, it simply asks that for the reasonable accommodation of the public, defendant be required to stop its passenger trains as was the practice prior to April 28th, 1911.

Defendant's objections to granting this request were on account of the hill, where it is admitted that it is harder to stop and start trains, and entails perhaps a trifle more expense than on level track, and the Commission is of the opinion that a petition to stop freight trains at Willis should be promptly denied. Defendant's formal answer to this complaint alleged that the stopping of trains at Willis involved an element of danger on account of the heavy grade, but in his testimony before the Commission, E. C. Manson, General Superintendent, says:

> Q. "Would you now say that it would be entirely safe to the equipment and to the traffic to stop passenger trains at this point in view of the conditions here?"
>
> A. "Well, when you come down to a matter of safety, there is no reason on earth why you cannot stop trains here safely."

Mr. Manson's testimony, in the mind of the Commission, disposes of the alleged dangerous features, and while we realize that a carrier could not consistently be required to stop its

trains every mile and a half, or establish stations to better accommodate only a small amount of business, we do believe that there are conditions attending this case which justify the granting of the petition, and

IT IS HEREBY ORDERED that the defendant, the Oregon Short Line Railroad Company, shall on and after the first day of October, 1911, stop at least one passenger train in each direction daily at Willis, when there are one or more passengers to get on or off, and the secretary is instructed to serve upon the said Oregon Short Line Railroad Company a certified copy of this Report and Order, which shall remain in effect until the further order or approval of this Commission.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Dated at Helena, Montana, Sept. 7th, 1911.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA

SHIELDS RIVER VALLEY, Residents of, Complainants,

vs.

NORTHERN PACIFIC RAILWAY CO., Defendant.

IN THE MATTER OF Alleged Insufficient Train Service on the Shields River Branch of the Northern Pacific Railway.

HEARING, August 17th, 1911.
DECIDED, September 25th, 1911.

REPORT OF THE COMMISSION.

Number 49.

Hearing at Clyde Park, August 17th 1911.

REPRESENTED:

Complainants By H. J. Miller, Counsel.
Defendant By C. L. Nichols, Gen'l Supt.
" A. V. Brown, Div. Supt.
" W. H. Merriman, D. F. & P. A.
Commissioners Stanton and Boyle.

The Shields River Branch of the Northern Pacific Railway connects with the main line at Shields River Junction 5.7 miles east of Livingston, and extends to Wilsall, a distance of twenty-three miles. This branch was completed and put in operation December 22nd, 1909, or a little more than a year and a half ago.

The present train service, and which is the subject of this complaint, is "mixed," tri-weekly, and the prayer of complainants is that the defendant be required to operate a daily train between Livingston and Wilsall.

The territory served by this branch line is devoted entirely to agriculture, sheep and stock raising, and according to the testimony of witnesses for complainants, which appears to be undisputed, there are approximately fifteen hundred persons living along the line and in sections contiguous thereto, and their greatest grievance in regard to the tri-weekly train service was shown to be the expense and loss of time in going to Livingston where they must remain two nights, whereas in

nearly all cases, complainants could transact their business in a few hours and return home the same day or the following morning at the latest, depending upon the time the daily trains were scheduled to leave. The inconvenience to passenger travel was dwelt upon by practically all witnesses for complainants; in fact the transcript of testimony would seem to be conclusive that being obliged to go to Livingston by stage, or by private conveyance rather than lose so much time waiting for "train day" was the paramount cause for this petition. It was also cited that with daily service, the railway company would carry and derive the revenue from the United States mail which is now handled by stage, six days per week. This same stage line carries passengers and express, which complainants believed would be a considerable source of revenue to the defendant, with proper train service, as in all probability the present patrons of the stage lines would travel and ship via the more modern means of transportation.

Again, complainants felt that their interests in the valley suffered under the tri-weekly train service, for the reason that outsiders coming into the state with a view of locating, would not on account of the length of time required, visit the Shields River country, whereas with a daily train the development of the valley would be enhanced, and would revert to the speedy emolument of the defendant.

Complainants Exhibit A was presented to show the acreage of the valley under cultivation, and the growth of its development since the advent of the railroad. This statement was prepared by taking the actual acreage of one hundred representative farmers for the years 1910 and 1911, that for 1912 being estimated, and shows:

Year.	Acreage.
1910	8,842
1911	13,389
1912	21,325 (estimated)

These one hundred farmers represent according to the testimony of witnesses competent to judge, one-eighth of the valley's producing area, and would mean that the acreage under cultivation in these three consecutive years would be:

Year.	Acreage.
1910	70,736
1911	107,112
1912	170,600

The testimony of stock and sheep men does not show that

that industry suffers for lack of train service, as this business is taken care of by special train (in lots of ten cars or more) regardless of the regular train day; except of course, that daily service would in some instances be more convenient to the shipper who had less than ten cars, and which would be handled on the regular train.

Defendant's answer to formal complaint denies that the present service is insufficient and inadequate, and avers that the operation of the branch has been unremunerative from the beginning; therefore prays that the complaint in this proceeding be dismissed.

C. L. Nichols, General Superintendent of the Northern Pacific Railway Company, testified that the construction of the branch cost the company $599,410.00, or $26,061 per mile, not including equipment, and that from December 22nd, 1909, the date on which operation was commenced, to May 31st, 1911, the revenue and expenses were as follows:

Revenue—		
Freight	$12,951.69	
Passenger	9,118.24	$22,069.93
Expenses—		
Maintenance of Way and Structures	$ 7,192.96	
Maintenance of Equipment	1,617.34	
Trans. expenses	14,860.90	
Traffic and Gen'l expenses	1,136.22	
	$24.807.42	
Taxes	3,576.84	
Rental of Equipment	1,658.74	30,043.00
Expenses in excess of Revenue		$ 7,973.07

The total train mileage during this period was 12,985. The revenue and expense per train mile as per the above statement, shows:

Revenue	1.70
Expenses	2.314
Loss per train mile	.614

It will be remembered that the foregoing statement of operation is on basis of tri-weekly train service, and while there seems to be no question as to the rapid development of the Shields River Valley, the increased revenue to the railway company under daily service is entirely problematical; at the same time it can be definitely stated that the cost of operation would increase approximately thirty-nine per cent. It is true that the courts have held, and we think properly so, that branch lines, or feeders, are entitled to a percentage of the main line earnings on business originating on or destined to points on

such branch, and applying this principle to the case before us, crediting the Shields River Branch with thirty-five per cent. of the main line gross earnings, we find the following result:

Main Line Revenue	$95,544.60	
35 per cent of which is		$33,440.61
Deduct therefrom the deficiency as shown above		7,973.07
and we have a net revenue of ...		$25,467.54

to represent not only the money invested in the construction of the branch itself, but the use of the main line, and the equipment of the road to handle the business from Shields River Junction to its destination. But, assuming that the net revenue of $25,467.54 is wholly a credit to this branch, and allowing that the cost of construction as hereinbefore testified was $599,-410.00, it would mean a return of 2.84% per annum on the investment. This on basis of the present tri-weekly train service.

Looking at the business of the branch as testified by W. H. Merriman, District Freight and Passenger Agent, we find that for the year 1910, there were taken out of the valley four hundred and twenty-three cars, or an average of two and three-fourths cars per train day (tri-weeky). Granting that the acreage under cultivation in 1911 has increased over 1910 as already stated herein, and that the estimate for 1912 is reasonably correct, there would be shipped out in 1911 four and one-fourth cars, and in 1912 seven cars per day, three days a week.

The authority of the Commission is vested in Section 4382 of the Revised Codes of Montana (Sec. 19, Railroad Commission Law), and provides that. "The Board shall have the power, and it shall be its duty, to compel any and all railroads subject hereto, to provide, maintain and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public. * * * "

The courts have established the principle that what constitutes reasonable service and what constitutes additional service, must be largely guided by whether the cost of such service exceeds the revenue derived therefrom. It has also been held that additional service based on prospective business is vicious and unsound. We must, therefore, in the analysis of this testimony base our findings largely on the conditions as they obtain at the present time, and in doing so, must agree that this branch line of railroad, by the most liberal methods of calculation, has been shown not to be self-sustaining. The Commis-

sion fully believes that in time the Shields River Valley will be an important feeder to the trunk line of the Northern Pacific Railway, and the defendant has stated, no doubt in good faith, that it stands ready to furnish all the service and facilities that the prospective business demands, when such traffic is offered for transportation.

In view of the financial and other conditions as set forth in this report, the Commission finds in favor of the defendant, and the proceedings are hereby dismissed without prejudice to the cause of complainants.

The Secretary is directed to serve upon the parties hereto, a certified copy of this report.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Dated Helena, Montana, Sept. 25th, 1911.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA

POWER, MONTANA, Residents of,

Complainants,

vs.

GREAT NORTHERN RAILWAY CO.,

Defendant.

IN THE MATTER OF Erecting a Depot at Power, Montana, and placing an Agent in Charge thereof.

HEARING, August 2nd, 1911.
DECIDED, October 4th, 1911.

REPORT AND ORDER OF THE COMMISSION.

Number 50.

Hearing at Power, Montana, August 2nd, 1911.

REPRESENTED:

Complainants By John Zimmerman, et al.
Defendant By C. O. Jenks, Div. Supt.
" J. T. McGaughey, A. G. F. & P. A.
Commissioners Morley and Boyle.

Complaint alleged unreasonable service on the part of defendant, in that the volume of business transacted at Power was sufficient to warrant a station building suitable to take care of passenger and freight traffic, and the services of an agent. Answer of defendant to complaint denied all material allegations, and prayed that the proceedings be dismissed.

Power is located on the Great Falls-Shelby line of the Great Northern Railway, in the extreme southeast corner of Teton County. Until within the last two years, the country tributary to Power was largely devoted to sheep raising, but of late, the extensive ranges have been cut up more or less and settled upon by agriculturists, to the end that many more families now reside in the district than prior to two years ago. This influx of settlers has, of course, increased to a large extent the business of the railroad at that point; in the opinion of complainants, sufficient to justify an open station.

The testimony presented at this hearing was very similar to all complaints of like nature. The chief cause for grievance

appeared to be the manner in which less than carload shipments were unloaded; the practice of train crews being to throw stuff off anywhere between switches where it was frequently damaged or destroyed by the elements—sometimes stolen. Also the inconvenience of being obliged to be at the depot when shipments arrived, particularly necessary during bad weather to avoid damage to perishable commodities such as cement, flour, dry goods, etc.

During the past year, Power has been the shipping and receiving point owing to the topography of the country, for a large portion of the business that will go to points on the Sun River Branch upon completion of that line, which is now under construction from Vaughn to Augusta, and the traffic through Power station for the coming year cannot therefore be measured by the past twelve months. It is doubtful in the mind of the Commission whether the increased acreage under cultivation in the Power territory proper will offset the detractions of the Sun River Line when opened for traffic in the near future. There are many stations on the Great Northern in Montana where as much or more business is handled than at Power, at which stations there are no agents in charge, and the facilities for receiving and forwarding freight are practically the same.

The Commission agrees, however, that it is the function of any carrier to afford protection to shipments transported or to be transported, and to provide a suitable place for passengers waiting for trains, but the evidence adduced at this hearing and by further independent investigation since that date, is not convincing that an order would be justified in full compliance with the petition, and

IT IS HEREBY ORDERED that the defendant, the Great Northern Railway Company, shall provide sufficient platform at Power to take care of all freight received or shipped therefrom, and shall, not later than October 31st, 1911, erect at Power one of its standard portable depots, said depot to be in charge of a custodian, and to be kept clean and comfortable for passengers. The said Great Northern Railway Company shall also make necessary arrangements for the placing of less than carload shipments of freight and all baggage and express in said portable depot, and shall notify the Commission in writ-

ing on October 31st, 1911, that the terms of this Order have been complied with.

The Secretary is directed to serve on the parties hereto, a true and certified copy of this Report and Order Number 50.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Dated Helena, Montana, October 4th, 1911.

(Signed) R. F. McLAREN, Secretary.

Subject: Train Service, Paradise-St. Regis Cut-off.

J. Hart Willis and Geo. R. Ogden, representing Numerous Residents of Missoula and Sanders Counties,

vs.

Northern Pacific Railway Company.

Refer to Page 13, Commission's annual report, year ending November 30th, 1910, on this same subject. The train service which was inaugurated May 30th, 1910, was discontinued August 14th, 1910. This service was performed by an engine which was located at St. Regis, doing the work of the Big Blackfoot Milling Company. The work of the B. B. M. C., had dropped off to such an extent that this engine was no longer needed at St. Regis, and the discontinuance of train service over the cut-off was, it might be said, a forced action on the part of the railway company, as the revenue derived between Paradise and St. Regis was not at any time suffiicient to warrant operating the train.

This question was brought up again by complaint Nov. 23rd, 1910, alleging that the service which was given from June 1st to August 14th, was not of sufficient duration to determine the necessity therefor, as it required considerable time to work up a business between that section of the state and the Coeur d'Alene country, and set forth the argument that the great benefit derived by the people of Sanders county, and to the mining and lumbering interests of the Coeur d'Alenes, would in time, culminate in a large traffic between these points, but that the service must be guaranteed to continue until such time as the business has developed.

Another feature of the complaint was due to the rules of the railway company in not permitting women or children to ride on freight trains between Paradise and St. Regis, while men were permitted to do so, but the women and children must travel via Missoula, about 150 miles further. The petition of November 23rd, presented a strong argument, and an informal conference with the railway company brought about the establishing of train service over this piece of track tri-weekly, and a modification of the rules permitting women and children as well as men to ride on said train when furnished with proper transportation. This will be given a fair trial, the railway company agreeing to continue it as long as the travel and tonnage movement appeared to justify, and re-

serving the right to discontinue it when in their judgment, it is no longer necessary.

Mr. J. Hart Willis and Mr. Geo. R. Ogden, attorneys for these complainants advise under date of January 20th, that "The service as arranged is highly satisfactory, and we appreciate your efforts in obtaining it. The railroad company seems fair in their proposition, and we are glad to accept it, feeling sure that a good experiment will justify our contention that the service is a public necessity."

Subject: Plains Train Service.

Plains, Montana, Commercial Club,

vs.

Northern Pacific Railway Company.

Northern Pacific Time Card No. 34, effective Sunday, April 23rd, starred east-bound train No. 4 at Plains.

Three east-bound passenger trains, however, were scheduled to stop at that station. These were bunched in the afternoon within a space of three hours, and in order that Plains people might go to Missoula, transact their business and return the same day, petition was presented, asking that No. 4 stop at that station.

Plains is probably the most important point between Kootenai and Paradise. Missoula is their trading point, and many of the Plains people daily transact business at Missoula, but seriously object to being obliged to require two days for the round trip.

When the matter was presented to the railway company, the reasonableness of the request was apparent, and train No. 4 was made a flag stop at Plains for passengers destined Missoula or east thereof, which was quite satisfactory to the petitioners.

Subject: Train Service.

Residents of Plentywood, Medicine Lake, Bainville and Intermediate Territory.

vs.

Great Northern Railway Company.

Completion of the Bainville-Plentywood branch of the Great Northern Railway Company, is mentioned on Page 143, of our last annual report, and as stated, it was not the intention of the railway company to open this branch for traffic until 1911. During the winter months, however, of 1910-11, irregular freight service was operated over this piece of track, as weather conditions would permit, and depending upon the amount of freight at Bainville for branch points.

The railway company would not permit passengers to ride on this train, and a petition was presented to the Commission citing the inconvenience and hardship particularly in bad weather, of being obliged to drive from Plentywood, a distance of some 50 miles, and requesting that the Great Northern Railway Company modify its instructions to the extent that passengers would be allowed to use this train when provided with proper transportation, and upon execution of the customary freight permit. It was also the understanding of the complainants that the branch would not be opened for regular traffic until the Fall of 1911, or until this season's crop was ready to move.

On taking the question up with the railway company, it was learned that the greatest objection to so doing, was the danger involved, particularly to women and children, riding in a caboose attached to a freight train doing local work, and at that time, which was in February, 1911, Gen'l Supt. Taylor in conference with the Commission, stated that just as soon as Spring business opened up, a mixed train would be put on between Bainville and Plentywood, carrying a coach for the accomodation of passengers. This service was inaugurated March 13th, leaving Bainville on the arrival of west-bound local passenger train No. 229, and returning connecting with Train No. 230 east-bound. This arrangement was highly satisfactorv to the complainants.

Subject: Train Service, Neihart Branch.

Residents of Belt, Riceville, Albright and Monarch,

vs.

Great Northern Railway Company.

What is known as the Neihart Branch of the Great Northern Railway, extends from Armington Junction to Neihart in Cascade County, a distance of 38.2 miles, the train service over said branch consisting of a daily (except Sunday) mixed train handling freight and passengers, and connecting at Armington with main line trains east and west-bound.

This complaint asked that the Armington Branch line train operate between Neihart and Belt, the latter being a town of some importance 1.8 miles west of Armington, so that persons having business to transact in Belt, would not be obliged to walk or drive this 1.8 miles, or else lose considerable time at Armington waiting for a west-bound train.

Petitioners further complained of the equipment provided for the use of passengers, alleging that women and children were obliged to occupy the same compartment where men were smoking, and in other ways making it undesirable.

Defendant was unwilling to extend this service between Armington and Belt, largely for main line operating reasons, but agreed to furnish suitable passenger equipment so that the objections hereinbefore stated, would be overcome. The petitioners upon reconsideration, agreed to accept the improved service, and withdraw that portion of their complaint relating to the Belt feature. The service has been improved, and since the date of defendant's answer there, has been no further complaint, and we believe from observation, that there is no cause for such.

Subject: Passenger Train Service.

Heron, Montana, Residents of and Vicinity,

vs.

Northern Pacific Railway Company.

Heron is situated on the main line of the Northern Pacific Railway in Sanders County, close to the Montana-Idaho state line. Complainants petitioned for "two passenger trains each way per day, as near 12 hours apart as possible; stop on flag will be sufficient."

The only passenger trains scheduled to stop at Heron, are the locals west-bound at 9:13 A. M.; east-bound 10:57 A. M. It was found on investigation that it would not be possible to have two trains daily in each direction, stop at that station 12 hours or nearly so apart. The best that could be done in addition to the locals referred to, would be to stop Train No. 41 west-bound, and Train No. 6, east-bound, and believing that the petitioners were justified to some extent in their complaint, the matter was taken up informally with the railway company with a view to having trains No. 41 and 6 stop on flag only. Defendant was unwilling to do this, on account of the schedule of these trains, stating that the number of requests that had been made to impose additional stops on their through transcontinental trains, was having the effect of preventing them from making their scheduled running time, which was very essential in view of competition for through coast business. However, upon the further suggestion of the Commission, the defendant agreed to stop trains 41 and 6 at Heron on flag for passengers east-bound destined east of Paradise, or west-bound destined Spokane or west. This arrangement was made, but apparently did not satisfy the complainants, and upon further protest to the Commission, it was explained that no further action could be taken except upon formal procedure, and inviting a formal complaint in accordance with our Rules of Practice. This, however, the petitioners have not seen fit to present up to the present time, November 30th.

Subject: Passenger Train Service.

Poplar, Residents of,

vs.

Great Northern Railway Company.

The residents of Poplar, Montana, made complaint on November 1st, 1910, as to the efficiency of passenger train service west-bound, stating that train No. 229 due at 9:45 A. M. was the only west-bound passenger train carded to stop at that station, and prayed that train No. 3 which is due at 7:13 P. M., be made a regular stop.

The investigation showed that Poplar is considerable of a trading point, and is the government agency for the Fort Peck Indian Reservation. It is also the most advantageous railroad station for a large number of persons residing in Dawson county south of Poplar, and an extensive settlement outside of the Indian Reservation, including the towns of Scobey and Redstone. Taking all the conditions into consideration, it was thought to be a reasonable request, and the answer of the railway company to the complaint, agreed to stop No. 3 regularly at that station, commencing December 26th, 1910.

Subject: Passenger Train Service.

Saco, Residents of,

vs.

Great Northern Railway Company.

This complaint stated that Train No. 229, due to arrive at Saco 2:20 P. M., being the only west-bound passenger train scheduled to stop at that station, did not furnish reasonable accomodation for passengers over the line of the defendant company, in accordance with its duties as a common carrier, and requested that west-bound passenger train No. 3 due at Saco 10:24 P. M., be required to stop regularly at that station.

The investigation showed that Saco was the most convenient railroad station for quite an extensive territory both north and south, and upon submitting the facts to the railway company, the latter agreed to comply with the request, and the schedule of Train No. 3 was changed effective Dec. 17th, 1910, making a regular stop for that train.

Subject: Train Service.

Bridger, Montana, Residents of and Vicinity,

vs.

Northern Pacific Railway Company.

An informal complaint was presented to the Commission February 20th, 1911, in the matter of alleged insufficient and inadequate passenger train service between Billings and Bridger, over the line of the Northern Pacific Railway Company.

The Commission was requested by petitioners to withhold action temporarily, and under date of April 15th, the proceedings were withdrawn for the reason that the railway company had agreed and arranged for exclusive passenger train service between the points named, to go into effect April 23rd.

Subject: Reporting Elkhorn Train at Boulder.

Arthur Blamey,

vs.

Northern Pacific Railway Co.

The Northern Pacific Railway Company owns and operates a brnach line between Helena and Boulder under a trackage agreement, i. e., the Northern Pacific-Elkhorn train is made up at Helena and moves thence to Boulder over the rails of the Great Northern Company. Under this trackage agreement, the Northern Pacific is not permitted to handle any passengers between Boulder and Helena, nor to handle any freight destined to intermediate points.

Complainant in this case stated that on January 27th, 1911, he waited at the N. P. station at Boulder from 11:55 A. M., until 6:05 P. M., for the train going to Elkhorn, and during this time was unable to obtain any information from the N. P. agent as to the probable time of arrival. The N. P. agent has no wire connection with Helena, and was therefore not in a position to ascertain when the train would arrive at Boulder Great Northern Station. The agent of the Great Northern, however, could very easily find out where this train was and report by telephone to the other depot, but apparently no effort of this kind was made.

The Commission explained the situation to the superintendent of the Northern Pacific and it was at once arranged so that the Great Northern agent would ascertain by wire, when this train would reach Boulder, and communicate by phone with the N. P. agent, who was instructed to bulletin the time on his black-board for the information of the public, the same as is done in compliance with the law at all other stations.

There has been no further complaint.

Subject: Depot and Agency.

Hall, Montana, Residents of, and Vicinity,

vs.

Northern Pacific Railway Company.

Hall station is located on the Philipsburg Branch of the Northern Pacific Railway 6.2 miles south of Drummond, and 19.7 miles north of Philipsburg. The distance between Philipsburg and Drummond is 25.9 miles, between which points there is no agency. A formal complaint was made February 4th, 1911, praying that a depot be constructed and the station placed in charge of an agent for the proper and expeditious handling of the business received at and forwarded from Hall.

Petitioners submitted figures to show the volume of traffic to and from that point in the past, in view of which, and the fact that Hall is the most accessible railroad point for approximately 650 people residing in contiguous territory, the defendant company's answer agreed to grant the request, and Hall station was opened with an agent in charge May 2nd, a temporary building being used as a depot until the railway company can make arrangements to provide a standard station building.

Subject: Agency, etc., Hysham, Mont.

Hysham, Residents of,

vs.

Northern Pacific Railway Co.

A formal complaint was made by the above named complainants on January 25th, 1911, praying that the Northern Pacific Railway Company be required to establish an agency at Hysham, in Rosebud County, and provide stock yards at that place.

Complaint was served on the defendant railway company January 27th, and on February 10th, application was made by the defendant for an extension of time in which to make answer, in order that the matter might be given further consideration. Answer was made under date of February 12th, praying that the proceedings be dismissed on account of insufficient revenue on business received at and forwarded from that station for the preceding six months. However, on February 27th, defendant advised that upon reconsidering the situation, they were willing to open Hysham station with an agent in charge, who would also be a telegraph operator, providing complainants were willing to waive their demand for stock yards.

This proposition being agreeable to the complainants, the proceedings were withdrawn, and Hysham station was opened as an agency on April 11th.

Subject: Feely Agency and Station Facilities.

Feely, Residents of and Vicinity,

vs.

Oregon Short Line Railroad Company,

A. E. Anderson, representing the petitioners in this case, presented complaint to the Commission on January 10th, 1911, praying that the Oregon Short Line Railroad be required to maintain an agent at Feely station in Silver Bow county, and to furnish reasonable, suitable and adequate facilities for the receipt and transportation of freight at said station, and for the convenience and protection of passengers and property, alleging that without these facilities, complainants are subjected to great loss and inconvenience.

Complaint was served on January 13th, and according to our Rules of Practice, answer was due not later than January 21st. The defendant, however, on the 19th, asked for an extension of time until February 1st, in order to give the subject further consideration. This request was granted, and on January 30th, answer of the defendant was made, agreeing to at once open said station of Freely, with an agent in charge, and to provide telegraph service as well as adequate and reasonable train service for the accommodation of the public.

The complaint was thereupon dismissed.

Subject: Elk Park Agency.

Elk Park, Residents of, and Vicinity,

vs.

Great Northern Railway Company.

A petition signed by 34 residents of Elk Park and vicinity, was presented on November 12th, 1910, through Messrs. Kelly & Kelly, attorneys at law, Boulder, Montana, asking that the Great Northern Railway Company be required to open Elk Park station with an agent in charge, there already being a depot building there.

The usual inconveniences attending a non-agency station, were cited, and petitioners believed that the amount of business transacted with the railway company would warrant their request being granted. Reference to reports of the auditing department of the defendant company showed that the average earnings at that station for the past nine months, both freight and passenger, were but $210.00, or about $7.00 per day.

Upon this showing complainants were informed that before the Commission could consistently ask the railway company to go to this expense, it must first be shown that the request was a reasonable one, and that the traffic demanded the facilities asked for.

There were no conditions attending this petition which would make Elk Park materially different from any other station of similar capacity, and in view of the very small amount of business done during the past nine months, and nothing to indicate that it would increase in the near future, attorneys for the complainants were advised of the facts, and the Commission suggested that the petition be withdrawn, owing to lack of argument to sustain the position taken.

Subject: Access to Station Grounds.

R. Telstad,

vs.

Great Northern Railway Company,

This complainant carries the mail at Telstad, Montana, which is a non-agency station, and complained that in order to reach the mail crane, it was necessary that he crawl through a barb wire fence; that he had made a gate in the railroad company's right of way fence, so that he might reach the right of way, which also served for the convenience of passengers, but the section employes had closed up the opening.

When the situation was explained to the general superintendent, the latter arranged at once to put in a revolving gate close to the mail crane, which was all that was necessary to satisfy the complaint in full.

Subject: Location of Depot.

St. Regis, Montana, Residents of,

vs.

Northern Pacific Railway Company.

Upon completion of the St. Regis-Paradise Cut-off, or soon thereafter, the defendant erected a depot at St. Regis at the junction of the cut-off, and its Coeur d'Alene line, in which building, the telegraph operators have since been located, while the company's agent has retained his quarters in the old depot approximately one-half mile west of the junction.

A new county bridge has just been completed across the St. Regis River, over which the people of the town of St. Regis are enabled to reach the new depot at the junction, and the railway company is about to transfer the office of the agent from the old to the new building, hence this complaint which alleges that the contemplated change will "Depreciate real estate values in the proximity of the present depot site, which has been established for a number of years; that it will increase the length of haul of freight, express, etc., to and from said depot, and greatly inconvenience the business interests and citizens of this locality, endangering lives and property by the presence of two railroad crossings at the end of a cut on a curve, and establishing a depot site inconvenient to our welfare." The Commission is asked to prevent the defendant from carrying out their plans.

Our investigation disclosed that while the petitioners would be required to haul their freight and express a greater distance from the junction than from the old site, there was no particular danger involved, and looking at it from an operating standpoint, the telegraph operators must be stationed at the junction, in order to handle the trains over the cut-off as well as the Coeur d'Alene line.

As to the effect the change will have upon the values of property, complainants' recourse is through an action in the courts. This Commission, of course, is not authorized to award damages, and having a complete understanding of the situation, we feel that the railway company has the right to change the location of its depot as herein described, which change we understand will be made at once, and the old depot abandoned.

Subject: Elso Station Platform.

W. G. Jarrett,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

Complaint was made to the Commission on July 31st, 1911, stating that the C. M. & P. S. Ry. Co. had no facilities at Elso for the accommodation of either freight or passengers, and requested that a suitable platform be built so that passengers might more conveniently get on and off trains, and that freight might be there unloaded instead of along the right of way where it was very often damaged or destroyed by the elements.

It was only necessary to call the attention of the C. M. & P. S. Ry. Co. to this matter in order to have the request granted, and arrangements were immediately made to construct a suitable platform.

Subject: Marion, Montana, Freight Warehouse.

Marion, Residents of,

vs.

Great Northern Railway Co.

Complaint was made to the Commission on June 21st, 1910, stating that at Marion, Montana, the defendant had failed to provide a suitable building for the care of freight shipments, and as a result freight received was being scattered along the track exposed to the elements and theft, very often damaged. The petition asked that the railway company be required to furnish a suitable building and instruct its employes to unload less than carload freight shipments therein.

Marion is located on the Flathead Branch, 23½ miles west of Kalispell, and on taking the matter up with the railway company, it was arranged to provide a building 12x20 feet, same being raised to a level with the floor of a box car so that freight could be unloaded therein without dropping it and in this way causing damage. The building referred to is of suitable dimensions to take care of the amount of business trnsacted at that station, and satisfies the complaint.

Subject: Agency and Station Facilities.

Laurin, Residents of,

vs.

Northern Pacific Railway Company.

A petition was presented by the residents of Laurin, Montana and vicinity, November 8th, 1910, soliciting the services of an agent at that station which is located on the Ruby Valley branch of the defendant company between the stations of Sheridan and Alder, and distant therefrom 7.9 and 3 miles respectively. Both Sheridan and Alder are open stations.

The petition did not appear to set forth facts which would warrant the request, and on further investigation, it was learned that the total revenue for eleven months ending November 30, 1910, both freight and passenger business, averaged only $403.00 per month, in view of which, and the fact that Alder was only three miles distant, equipped with all necessary facilities for receiving and forwarding freight and passenger business, petitioners were requested to submit any further arguments they might have in support of their claim. It developed, however, that there was nothing further to submit, and upon the showing made, the Commission recommended that the petition be withdrawn for the reason that the amount of business transacted at that station would not warrant the expense of providing a depot and maintaining an agent in charge.

ASSINNIBOINE, CLOSING STATION.

The Great Northern Railway Company made application to the Commission on July 26th, 1911, for permission to close Assinniboine station for the reason that the Post at Fort Assinniboine had been abandoned, and there would consequently be no business transacted at that point in the future.

Investigation showed that the circumstances were as stated in the application, and accordingly authority was given on July 29th, 1911, to discontinue the agency at once.

BONITA, CLOSING STATION.

The Northern Pacific Railway Company made application on July 24th, 1911, to be permitted to discontinue its agency at Bonita, Montana, supporting such application by a statement of tonnage, earnings and expenses for 12 months ending June 30th, 1911.

There was at one time a saw mill located in the vicinity of Bonita, form which source the railway company derived considerable revenue, but this industry no longer exists, and upon the showing that the gross earnings, both freight and passenger, for the year above mentioned, averaged but $447.75 per month, and particularly due to the fact that since the month of March, 1911, hardly sufficient business has been transacted at that station to pay the salaries of the employes and incidental expenses, the Commission authorized the station closed Sept. 1st, 1911.

CENTRAL PARK, CLOSING STATION.

The Northern Pacific Railway Company on July 24th, 1911, made application to discontinue its agency at Central Park, Montana, claiming that the amount of business handled at that point was entirely insufficient to warrant the continuance of an open station.

Figures furnished by the railway company for 12 months ending June 30th, 1911, show that the average gross earnings, both freight and passenger, for that period, were but $253.75 per month, and in fact, for the months of April, May and June, the gross receipts of Central Park were not sufficient to pay the salary of the agent and incidental expenses of the station.

Central Park is situated in the Gallatin Valley, and during the Fall months, considerable grain is shipped. The application requested authority to close the station September 1st, but in view of the busy season being almost at hand, the Commission requested that the agent be allowed to remain until January 1st, 1912, at which time the grain would be shipped out, and the station then closed. This suggestion was agreeable to the railway company and acted upon accordingly.

JANNEY, CLOSING STATION.

Application of the Chicago, Milwaukee & Puget Sound Railway Company to close Janney station Sept. 26th, 1911, was approved by the Commission upon the showing that during the past five months, there had been practically no business, either freight or passenger, transacted at that station, and no prospect for any in the near future. In fact, the total receipts for five months preceding Sept. 26th, amounted to $19.00, same being charges on freight received. There was no freight forwarded, and no ticket sales whatever.

LOTHROP, CLOSING STATION.

The Northern Pacific Railway Company made application to the Commission on July 24th, 1911, for permission to close its station at Lothrop, Montana, on account of the amount of business being done not justifying the expense of an agent and open station.

The business of the Western Lumber Company was the greater portion of the traffic handled at that station. These mills were recently moved to Bonner, and while the W. L. Co. had still a large amount of lumber on hand at Lothrop, none of it is moving, and indications are that it will not be shipped out this year.

The request of the railway company was granted, authorizing the station closed September 1st. Later if the business demands the services of an agent, it will be an easy matter to re-open the office.

PART II.

TARIFFS, RATES AND CHARGES.

REGULATION OF RATES, MINIMUMS, ETC.

The question has been asked a great many times, "Has the Railroad Commission authority to reject a tariff which a carrier may wish to publish, if the tariff provides for advances in rates or contains other objectionable features? Or must the Commission accept the issue regardless of its provisions and defer any action thereon until such time as a complaint is made attacking the reasonableness of the rates, rules, etc., which it carries?"

We would say in reply that this Commission has by virtue of Sections twenty-two and twenty-three, Chapter thirty-seven, Laws of 1907, the authority to reject any tariff, rate, toll or regulation, by refusing to certify thereto, in which event the issue cannot become effective, unless so ordered by the court, after due process of law, which action shall be commenced in the District Court of the county having jurisdiction. Sections 22 and 23 as referred to above, provide as follows:

> Section 22. If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, shall charge, demand or receive from any person, firm or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of property subject to the provisions of this Act, than that fixed by the said Board of Railroad Commissioners for such service, such railroad shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana, not less than five hundred nor more than two thousand dollars for each offense; provided that nothing herein shall be so construed as to prevent any railroad or railroad corporation from giving excursion rates to or from any point within or without the state.
>
> Section 23. If any railroad subject to this act, or its agents or officers, shall hereafter collect, charge, demand or receive from any person, company, firm or corporation, a greater rate, charge or compensation, than that fixed and established by the said Board of Railroad Commissioners for the transportation of freight, passenger or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight car, or for any other service performed or to be performed by it, such railroad and its agents and officers shall be deemed guilty of extortion, and shall forfeit and pay to the state of

Montana, a sum not less than five hundred dollars nor more than two thousand dollars.

In view of the restrictions placed upon carriers by the sections quoted above, the Commission requires by its Regulation dated June 10th, 1909, that proof copy of all proposed reissues of tariffs, supplements or amendments thereto, be submitted for approval before being printed. It is provided, however, that in emergency cases where there is insufficient time to submit proof copy, authority may be requested by letter, or by wire, setting forth the conditions and rates proposed, and if the Commission approves of same, authority is given at once. The necessity for this procedure will be apparent in view of the urgency occasioned by competition, new business coming up, market changes, and for many other reasons; for instance, following twenty-four hours hard freezing weather, a special rate on ice is voluntarily submitted to the Commission for approval. The business demands immediate action.

It will be noted from the above that all changes in rates, charges, minimums, etc., must have the approval of the Board, before same are legally effective. The negative power thus bestowed upon the Railroad Commission cannot be expressed in pecuniary terms, nor have we attempted in this report to list the hundreds of tariffs authorized during the past twelve months which would require a great deal of space, and for the same reason detailed reference has not been given to the many applications made by the various carrier companies to increase rates, and which the Commission has after careful investigation as to the reasonableness thereof, denied, but it is obvious from the number of complaints presented, attacking the freight rates on Montana intrastate business, that the authority conferred by statute to decline to certify to an objectionable tariff before same becomes effective, is much more satisfactory to the people than the laws of many states which do not clothe their Commission with the power to reject, except upon complaint, a tariff which is manifestly unreasonable and unjust.

INITIAL MOTION BY THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA

In the Matter of Switching Charges Between the Northern Pacific and the Chicago, Milwaukee & Puget Sound Railway at Missoula, and Between the Great Northern and the Chicago, Milwaukee & Puget Sound Rialway at Judith Gap.

Hearing, Nov. 16, 1910. Decided, Nov. 16, 1910.

REPORT OF THE COMMISSION.

Number 40.

REPRESENTED:

Northern Pacific Railway Company...By Charles Donnelly, Counsel.
" J. G. Woodworth, Traf. Mgr.
Great Northern Railway Company....By Charles Donnelly, Counsel.
" J. T. McGaughey, A. G. F. & P. A.
C. M. & P. S. Ry. Co. By F. D. Burroughs, A. G. F. A.
" W. P. Warner, A. G. F. & P. A.
Commissioners Stanton and Boyle.

As indicated in the title page, this hearing was called for the purpose of investigating the matter of switching at Missoula, and Judith Gap, between the N. P. and the C. M. & P. S., and between the C. M. & P. S., and G. N. respectively; the rate charged at Missoula being $6.00 per car, and at Judith Gap, where the interchange was not between points within established switching limits, the five mile General Distance Tariff was applied, making the cost for switching between the two lines from ten to fifteen dollars per car, against which many protests had been made to the Commission alleging that such charge was exorbitant, and much in excess of the rate charged at other points.

The testimony showed clearly that the preponderance of business handled at Missoula was from the Chicago, Milwaukee & Puget Sound to the Northern Pacific, destined to industries located on the latter; while at Judith Gap the movement consisted almost entirely of coal shipments from Roundup, a station on the C. M. &. P. S., going to points on the line of the Great Northern Railway. The switching charge on all competitive cars being absorbed as is customary, by the

carrier earning line revenue, or in other words, the carrier handling the shipment between the competitive points.

Mr. Donnelly, for the Northern Pacific and Great Northern Companies, reasoned at considerable length, that the C. M. & P. S., was a new railroad in Montana and not equipped with the terminal facilities of the more established lines, and that the said C. M. & P. S. Company could not and should not expect the Great Northern and the Northern Pacific to turn over the use, and advantages of their respective terminals on the same basis, as though the interchange of business were somewhat equal.

However, the necessity was apparent that some understanding be reached under which all kinds of carload freight might be loaded on the tracks of one road and transported to its destination over the tracks of another, or vice versa, and it was therefore agreed that the three railroads involved would decide what the charge should be for switching competitive business, which is absorbed by the competing line as referred to above, and in which the shipper or consignor is not particularly interested.

It was also mutually agreed between the railroads and the Commission that on non-competitive business, whether state or interstate, the switching charge should be 15c per ton with minimum of $3.00 and maximum of $6.00 per car, to apply at all stations between industries located on one line and the connection with that of the other, when the service performed is within station yard limits, except that rates now in effect, and which are lower than the above shall remain unchanged.

This schedule of rates to become effective not later than November 20th, 1910.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

Dated Dec. 9th, 1910.

(Signed) R. F. McLAREN, Secretary.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

In the Matter of Application by the White Sulphur Springs & Yellowstone Park Railway Company to Exceed the General Distance Tariff Freight Rates. Also to Consider the Efficiency of the Present Passenger Train Service Between White Sulphur Springs and Ringling.

Hearing, May 24th, 1911. Decided, July 15th, 1911.

REPORT OF THE COMMISSION.

Number 46.

The White Sulphur Springs and Yellowstone Park Railway is an independent line, 23.85 miles in length, connecting with the main line of the Chicago, Milwaukee & Puget Sound Railway at Ringling, Montana, and extending to White Sulphur Springs. The road has only been in operation a few months.

REPRESENTED:

W. S. S. & Y. P. Ry. By M. S. Gunn, Counsel.
" A. J. Nicholson, G. F. & P. A.
" F. D. Burroughs, A. G. F. & P. A., C. M. & P. S. Ry.

Commissioners Stanton, Morley and Boyle.

All of the testimony submitted by the railway company was to the effect that this line being, it might be said, scarcely beyond its construction period, must expect for the present, and for some time to come, a very limited tonnage passing over its rails, and consequently its revenue from traffic would be likewise limited until that section of the state through which it traversed had been developed to some extent, by the advent of the railroad.

It has been the experience of the Commission in nearly all cases that where an independent short line has been constructed for the purpose of opening up and developing the country tributary thereto, that for a time higher rates are absolutely essential to meet fixed charges and operating expenses. In this respect the W. S. S. & Y. P. Ry. appears to be no excep-

tion, as will be noted from the following statement of operating revenues, expenses and income for three months ending March 31st, 1911:

Total Revenue from Transportation, ...	$5,136.89	
Revenue other than Transportation	81.00	
Totaal Revenue		$5,217.89
Operating Expenses.		
Maintenance of Way and Structures ...	$ 860.50	
Maintenance of Equipment	.50	
Transportation Expenses	2,987.78	
General	312.00	
	$4,160.78	
Taxes, ...	450.00	
Total Expenses		$4,610.78
Operating Income for Three Months ...		$ 607.11

Upon this showing the Commission has authorized class rates approximately fifteen per cent higher than the General Distance Tariff schedule.

In regard to train service, effective May 30th, the Chicago, Milwaukee & Puget Sound Railway put into effect a new time table under which train No. 15, west-bound, arrives at Ringling, 2:34 P. M.; train No. 16, east-bound at 2:50 P. M. That is, only sixteen minutes difference between the arriving time of these two trains at Ringling, the junction point with the W. S. S. & Y. P. Ry., and the latter has changed its schedule so as to eliminate the long lay-over at Ringling, which has been the cause of much inconvenience to passengers to and from White Sulphur Springs.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

(Signed) R. F. McLAREN, Sec.

Helena, Montana, July 15th, 1911.

BEFORE THE RAILROAD COMMISSION OF MONTANA.

In the Matter of Application by the Gilmore & Pittsburgh Railroad Company to Promulgate a Special Freight Classification, and to Exceed the General Distance Tariff Rates.

Hearing, May 25th, 1911. Decided, July 28th, 1911.

REPORT OF THE COMMISSION.

Number 47.

The Gilmore & Pittsburgh Railroad connects with the Oregon Short Line Railroad at Armstead, Montana, crosses the Bitter Root Mountains through what is known as the Bannock Pass, into Idaho, thence to Gilmore on the south, and to Salmon on the north, having a total of 117.5 miles.

REPRESENTED:

Gilmore & Pittsburgh R. R. Co. By W. N. Bichler.
Commissioners Stanton, Morley and Boyle.

The principal business of the G. & P. R. R. and it might be said, the only business at this time, consists of ore shipments from mines located in Idaho, destined to the Smelters at Salt Lake, Utah. But thirty-five miles of this railroad is in Montana, namely, from Armstead to Wyno, the latter being at the summit of the mountain range dividing Idaho and Montana. There are but two small stations on the line between Armstead and Wyno, namely, Grant and Brenners, consequently the shipments made to or from these points constitute all the Montana intrastate traffic handled by the Company, and represents according to figures offered in testimony by the carrier, **one tenth of one per cent**, of the total tonnage handled over the entire line. The applicant, the Gilmore & Pittsburgh R. R. Co., had not adopted the Western Classification on either state or interstate traffic, and contended that the nature of its business was such that to do so would impose an unnecessary hardship and expense. The special classification and scale of rates submitted for approval to this Commission had been filed with the Interstate Commerce

Commission and in effect on interstate traffic, and in view of the fact as stated above, that more than ninety-nine per cent. of the business handled, moved interstate, this Commission did not consider that the very small amount of traffic handled between Montana points warranted the adoption of the Western Classification which would mean additional cost and would discriminate slightly against the shippers of interstate freight, from which source, as shown in this report. nearly one hundred per cent of the business originates.

Accordingly, the application was granted, and on July 28th. 1911, special classification and scale of rates was approved, same to remain in effect until the further order or approval of this Board.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

(Signed) R. F. McLAREN, Sec.

Helena, Montana, August 23rd, 1911.

COAL RATES MONTANA, WYOMING & SOUTHERN RAILROAD.

The Commission's Order Number 26, dated July 9th, 1909, was made after due notice and hearing held April 14th, and continued April 29th, 1909, to consider any phase of freight rates, intrastate, on coal from the various mines in Montana. The Montana, Wyoming & Southern Railroad Company (at that time known as the Yellowstone Park Railroad Company) was not represented at either hearing although regularly notified according to law that such investigation would be held at that time, and in accordance with our Rules of Practice, the Commission took such proof of facts as seemed proper and reasonable.

Said Order Number 26 established rates on coal, to become effective August 1st, 1909, of 50c per ton from the Bearcreek coal fields to points on the Yellowstone Park Railroad, and 35c per ton when destined beyond its own line; these rates surceasing the Y. P. R. R.'s 45c proportion of joint rates with the Northern Pacific Railway, and also rate of 50c per ton when destined beyond its own rails, and to which points no through rates with the Northern Pacific were in effect. The Montana, Wyoming & Southern Railroad is approximately twenty-five miles in length, and connects with the Northern Pacific at Bridger, Montana.

The Montana, Wyoming & Southern Railroad Company acquired by purchase the entire property of the Yellowstone Park Railroad Company, as of September 1st, 1909, and on November 16, 1909, by its president F. S. Gannon, made application to the Commission for re-hearing on the ground that "owing to the negligence of the management of the Yellowstone Park Railroad Company, the predecessor of the Montana, Wyoming & Southern, the former was not represented at the rate hearing last April. We feel that this neglect of duty was the cause of a general misunderstanding of the operating conditions in the Bearcreek region. The result of the operation for three months under the new rates demonstrates that it is impossible for the present management of the property to perform its duty to the public and its security holders under existing conditions. We are therefore, constrained to ask for a hearing, or in other words, that you reopen the case in order to give us an opportunity to submit the information

which you should have had in your possession when your Order No. 26 was promulgated."

Hearing was accordingly granted, and held December 16th, and 17th, 1909, upon which the Commission denied the application to advance the rates, (see Report No. 32, page 33, Annual Report 1909-10).

Bill of Complaint was, by the Montana, Wyoming & Southern Railroad Company, filed in the Circuit Court of the United States for the District of Montana, October 3rd, 1910, alleging that its business has been impaired and confiscated by the operation of said order number 26, and will continue to be impaired and confiscated as long as the said rate is in effect, and prays that it be adjudged and decreed that Order Number 26 and Report Number 32 of the Board of Railroad Commissioners of the State of Montana, are illegal and void, because in contravention of the Fourteenth Amendment of the Constitution of the United States.

That it be adjudged and decreed that writs of injunction, both temporary and permanent be granted, restraining the Commission from enforcing the provisions of said Order and Report. On October 3rd, 1910, a Temporary Restraining Order was issued by Judge Carl Rasch, enjoining and restraining the Commission from in any way enforcing the rates attacked, until the entry of an order upon the said motion, and that until such entry of order, the complainant may make the same charges for the transportation of coal destined to points beyond its own line, as were in effect prior to August 1st, 1909, provided that within five days complainant deposit in the National Bank of Montana of Helena, the sum of one thousand dollars, to be held subject to the Order of the Court as security for the prompt deposit of the difference in rate charged as hereinbefore provided; and provided further that there shall be deposited in said bank at the expiration of each ten days, during the continuance of this order, the exact difference between the thirty-five cent rate and the rates charged during such ten day period, to be held as a special deposit to the credit of this action, and in the event of this order being dissolved or vacated, the difference as above to be returned to the individual shipper.

The Commission was ordered to appear and did appear October 20th, 1910, in the Circuit Court, represented by the

Attorney General, to show cause why this temporary restraining order should not continue in full force and effect until the final hearing and disposition of the case. Under date of October 22nd, Judge Rasch issued an Order for Injunction continuing the temporary Restraining Order of October 3rd in full force and effect until the case was finally disposed of. The Commission's answer to Bill of Complaint was filed in the Circuit Court February 6th, 1911. Hearing was commenced before Master in Chancery Oliver T. Crane at Billings, March 27th, at which time complainant presented its case, concluding March 29th, alleging as stated in Bill of Complaint, that the rate of 35c per ton was confiscatory.

As to capitalization of the Montana, Wyoming & Southern Railroad, we quote from the Bill of Complaint, Paragraph III:

> "That your orator is incorporated with a capital stock of $5,500,000 par value, of which $1,000,000 par value is issued and outstanding. That 9,990 shares of said outstanding capital stock, together with $900,000 of bonds secured by a mortgage of your orator which is hereinafter more particularly described, and $50,000 of the equipment bonds of your orator secured by a car trust agreement or lease as hereinafter described, were duly issued and paid over to the Yellowstone Park Railroad Company and to its representatives in exchange for the entire property, franchises or equipment of the Yellowstone Park Railroad Company, free and clear of all liens, either by way of the mortgage of the Yellowstone Park Railroad Company hereinbefore described or otherwise, and for fifty box cars of the capacity of 80,000 pounds each, to cost $50,000, which were to be and were purchased by the Yellowstone Park Railroad Company and its representatives and delivered to your orator. That your orator duly made, executed and delivered to the Empire Trust Company of New York, a corporation organized and existing under the laws of the State of New York, as Trustee, its first mortgage dated Sept. 1st, 1909, covering all of its property, franchises and equipment so purchased, and any property which might thereafter be acquired by your orator, to secure an issue of bonds aggregating $5,000,000 with interest thereon at the rate of 5% per annum, payable semi-annually on the first day of March, and September in each year, of which only $900,000 of bonds were issued and are now outstanding. That said mortgage was recorded in the office of the Clerk of Carbon

County on October 1st, 1909, at page 452, Book 9 of Mortgages, and that the bonds above referred to were bonds duly authorized and issued by your orator under said mortgage.

That the car trust agreement or lease to secure the payment of the sum of $50,000 for equipment of your orator above referred to, was dated November 1st, 1909, and was made by your orator and said Empire Trust Company of New York as Trustee, and was duly filed and recorded in the office of the Secretary of State of the State of New Jersey, and in the office of the Secretary of State of Montana, and in the Clerk's office of the County of Carbon in the State of Montana, on or about November 6th, 1909. That as security for the performance of said agreement by your orator, it made, executed and delivered to said Empire Trust Company of New York, $50,000 of its bonds bearing interest at the rate of 5% per annum, payable semi-annually on May 1st and November 1st, in each year, and to become due and payable November 1st, 1916, and received therefrom the cars as above specified in accordance with the agreement aforesaid, and said bonds were delivered to said Yellowstone Park Railroad Company or its representatives. That said sale by the Yellowstone Park Railroad Company and its representatives of all the property, rights and privileges of your orator was in pursuance of Section 4299, Title 8, Chapter 1 of the Civil Code of the State of Montana, which took effect July 1st, 1895, whereby your orator purchased the whole of said railroad above described, together with all the property, rights, privileges and franchises pertaining thereto."

Complainant's statement of operation for year ending August 31st, 1910, in support of the Bill of Complaint, purports to show a net loss for that twelve month period, as follows:

Revenue from Transportation	$107,260.68	
Miscellaneous Trans. Revenue	192.00	
Total Revenue from Transportation	$107,452.68	
Revenue from Operations other than Transportation	2,932.38	
Total Operating Revenue		$110,385.06
Operating Expenses	$68,659.18	
Taxes	3,310.52	71,969.70
Operating Income		$38,415.36
Income from other sources		87.89
Hire of equipment (Dr.)		6,029.20
Gross Corporate Income		$32,474.05
Interest on funded debt		47,083.34
Net Loss		$14,609.29

The Commission's case was heard at Helena, commencing April 10th, and concluding April 15th, 1911. Space will not permit of a recital in detail of the testimony offered at that time, but it may be said that facts and figures were presented to show first, over-capitalization, second, inefficient service, third, the reasonableness of 35c per ton as compared with rates charged by other carriers for similar service.

First, Capitalization: We refer you to the foregoing complete statement, and invite attention to "Interest on funded debt, $47,083.34," which, when deducted from gross corporate income, shows a net loss of $14,609.29. Had the interest on funded debt been one-half of that amount, and which the Commission avers would have been too much, eliminating over-capitalization, the statement of operation for year ending August 31st, 1910, would show in place of a deficit, a net gain of $8,932.38. In support of this averment, we would say that prior to the final hearing of this complaint, the services of an eminently competent engineer, Mr. S. H. Crookes of Livingston, Montana, were engaged to make a physical valuation of the plaintiff's entire property, and such valuation was by him made on the ground, taking actual count and measurements. The result thus obtained, having the advantage of the Commission's instructions to over, rather than under estimate each division of the property, places the true value of the Montana, Wyoming & Southern Railroad, including its power and equipment, at $435,858.32.

Second, Inefficient Service. It was clearly shown that the Yellowstone Park Railroad nor the Montana, Wyoming and Southern Railroad had not fulfilled the obligations of its franchise as a common carrier in that the road had never been equipped to take care of the available tonnage from the coal mines in the Bearcreek field. The Yellowstone Park Railroad did not, and the Montana, Wyoming & Southern did not until recently, own any equipment whatever that would be accepted by its connection, the Northern Pacific Railway, nor was there any contract or agreement whereby the latter was obliged to furnish the former with cars for loading. It was simply a matter of courtesy on the part of the Northern Pacific to deliver empty equipment when they had it to spare, and at all other times, the complainant had absolutely no recourse and must remain idle until such time as its friendly connection came to its relief.

Every coal operator in the Bearcreek group of mines, without exception, testified that from the time this railroad was built, his business had been hampered and at times demoralized by the inability of the railroad to furnish empty cars for loading, and that today, the tonnage mined in the district represents but a small per cent of what it undoubtedly would be had the service been such as to warrant the mines taking large contracts, with some reasonable assurance that the railroad would do its part by furnishing the necessary equipment. **Tonnage** is the controlling factor on any railroad, and it has been shown beyond a doubt, that the revenue of the complainant in this case would have been multiplied had the road been properly equipped and operated.

Third—The reasonableness of 35c per ton: As already stated, the Montana, Wyoming & Southern Railroad is approximately twenty-five miles in length, and connects with the Northern Pacific Railway at Bridger, Montana. The business of the M. W. & S. has been shown to consist almost entirely of coal mined in the Bearcreek group, testimony places this commodity at 96% of the total tonnage handled, and it may be said that practically all of this business is interline with the Northern Pacific; in other words, the coal is destined to points beyond Bridger. The product of the various mines is assembled at a point above Bearcreek station, and there put into trains. The actual distance thence to Bridger is twenty-two miles, for which service the Montana, Wyoming & Southern is permitted under the Commission's Order No. 26, to charge 35c per ton. It will be noted that for a haul of twenty-two miles, 35c figures almost **sixteen (16) mills** per ton per mile.

Comparing this with the rates authorized by the Commission and charged by the Northern Pacific Railway on the same commodity, we find, first, that the rate from Bridger to Helena or Butte, the largest consuming points, is $1.55 per ton. The distance to either point is 252 miles, figuring **six and two tenths** (6.2) **mills** per ton per mile. Second, the **average rate** per ton per mile charged by the Northern Pacific Railway is **six and eight tenths** (6.8) **mills** per ton per mile. What is meant by "average" is this: There is no uniformity of distance in the transportation of coal on the Northern Pacific. It is hauled to stations close to the mines and to stations sev-

eral hundred miles away, and of course, to all intermediate points of varying mileage; but if the Northern Pacific Railway were to haul one car of coal from Bridger to each station on its main line and branches within the state of Montana, thus covering the long, the short, and the intermediate movement, the **average** revenue to the railroad company would be, as stated above, **six and eight tenths mills** per ton per mile, as against the Montana, Wyoming & Southern **average** of **sixteen** mills per ton per mile, or **more than two and one-third times as much** as the Northern Pacific receives for similar service.

It is true that short haul movements pay a higher rate than to more distant points, and properly so; as the distance increases, the rate per ton per mile decreases, and it is also true that the Northern Pacific Railway is permitted to charge more than thirty-five cents for less than twenty-two miles, but it must be taken into consideration that this is absolutely necessary to epualize the very low rate per ton per mile on the longer hauls. For example, the Northern Pacific is required to haul coal from Bridger to Heron, Mont., a distance of 551 miles, for $3.25 per ton, or **five and nine tenths** (5.9) **mills** per ton per mile. For this reason it will be at once obvious that the **short haul business must be allowed higher than the average rate,** and that is why the Northern Pacific is permitted to charge more than 35c per ton for distances less than 22 miles. On the other hand, the Montana, Wyoming & Southern is not called upon to perform long distance service; it has a uniform haul of 22 miles on practically every ton of coal mined in the Bearcreek field.

Summing up these comparisons, which have been made with the Northern Pacific for the reason that it is the only connection with the M. W. & S., and to which line the coal is delivered for movement to destination, we have the following:

Northern Pacific longest haul	5.9	mills per ton per mile
Northern Pacific to Helena or Butte	6.2	" " " " "
Northern Pacific General Average	6.8	" " " " "
M. W. & S. **Uniform Haul**	16.	" " " " "

NOTE:—M. W. & S. Average 16 / Nor. Pac. Avereage 6.8 mills or 2,353 times greater.

From this it would appear that the rate of 35c per ton was **at least fair** to the Montana, Wyoming & Southern on a comparative basis.

This case is still pending in the Federal Court owing to the resignation of Judge Carl Rasch.

OUR VIEWS OF THE EFFECT OF THE COMMONLY CALLED "SPOKANE RATE CASE," ON INTERSTATE BUSINESS DESTINED TO POINTS IN MONTANA.

Without further comment, we invite attention to our letter herewith, to the Interstate Commerce Commission, March 30, 1911, preceding the final decision of that body in the celebrated "Spokane" and "Salt Lake" rate cases, setting forth the situation as it effects, or rather should effect as we view it, Interstate business destined to Montana points.

"Honorable E. A. Moseley,
Secretary, Interstate Commerce Commission,
Washington, D. C.

Dear Sir:

In view of the recent final, and probably concluding arguments, heard by your Honorable Commission in the cases of the City of Spokane and Salt Lake, interested carriers will, no doubt, proceed immediately to revise and publish new rates from points of origin in the defined territories to intermountain districts as well as to Salt Lake and Spokane and their common points.

We have watched with interest the decisions of your Commission in the cases affecting rates from the eastern districts to Spokane, Salt Lake, etc., but have not deemed it advisable to intervene in behalf of the State of Montana as such action on our part probably would have had the effect of further complicating the cases which you had before you, and undoubtedly would have made it necessary to further postpone the effective date of the new rates at Spokane.

We do not wish at this date to be understood as coming before you as interveners; but you have not had presented to you, we believe, any extensive data or ideas on the Montana situation that would enable you to confidently pass either a favorable or an unfavorable opinion on the reasonableness of any new schedules of rates that might and probably will be filed with you by the carriers. If this view is correct, you will, no doubt, be pleased to have placed before you our ideas of the readjustments that should be made in the Montana rates contemporaneously with those at Spokane, etc.

In editing this, we have endeavored to eliminate all unnecessary detail so that the matter may be fairly considered

by you without entailing the study of a vast amount of data. Should you feel, however, that any further explanations or particulars of any character are necessary to bring this matter comprehensively before you, we will be pleased to comply promptly with any requests you may make.

The original complaint of the City of Spokane, 5 I. C. C. 479, then known as Spokane Falls, filed in the year 1889, alleged discrimination against the City of Spokane in favor of Missoula, Montana. At that time the adjustment of class rates at the two cities mentioned was as indicated below. Montana Common Points, viz., Helena, Butte, Anaconda, etc., are natural competitors of the City of Missoula, and for that reason rates then existing at Helena, a representative Montana common point, are also shown:

CLASS RATES IN CENTS PER 100 POUNDS FROM ST. PAUL.

Year 1889.

To	1	2	3	4	5	A	B	C	D	E
Spokane	350	300	250	200	175	175	155	125	110	90
Missoula	260	225	185	155	135	120	102	87	77	67
Helena	250	215	175	145	125	120	92	82	72	62

In that year, therefore, the differences between the Missoula and the Spokane rates were:

1	2	3	4	5	A	B	C	D	E
90	75	65	45	40	55	53	38	33	23

Subsequently, class rates at the three points named were changed, and in 1909 the adjustment stood:

To	1	2	3	4	5	A	B	C	D	E
Spokane	300	260	220	190	150	145	125	100	95	85
Missoula	236	201	165	142	118	118	94	83	59	47
Helena	225	190	158	135	113	113	90	80	55	45

Differences between the Missoula and Spokane rates:

1	2	3	4	5	A	B	C	D	E
64	59	55	48	32	27	31	17	36	38

In your decision dated February 9, 1909, 15 I. C. C. 379, class rates were set at Spokane as follows. We believe there was sufficient suggestion in your decision to warrant the carriers making a readjustment of rates at points intermediate to Spokane; however, the rates at Missoula and Helena remained as indicated:

To	1	2	3	4	5	A	B	C	D	E
Spokane	250	217	183	158	133	133	104	83	79	71
Missoula	236	201	165	142	118	118	94	83	59	47
Helena	225	190	158	135	113	113	90	80	55	40

Since the year 1889, therefore, the differences between the Missoula and the Spokane rates have been reduced from

	1	2	3	4	5	A	B	C	D	E
	90	75	65	45	40	55	53	38	33	23
To	14	16	18	16	15	15	10	..	20	

In considering a readjustment of rates at Missoula, and other Montana points, a difficulty presents itself in arriving at the proper percentage relationship of the various class rates to first class. Class rates to the Pacific Coast, were, no doubt, made to meet the conditions as they existed in that district with a result that different percentages of the first class rates exist there than are found elsewhere in the United States. Class rates to Spokane were adjusted by your honorable Commission on a basis of 16⅔ per cent below the rates at the Pacific Coast, and this resulted in the same scale of percentages being established at Spokane as at Portland, Seattle, etc.

Below is set forth a comparison of these percentage scales at Spokane, Missoula and Helena; class rates from St. Paul to all other stations in Montana (except eastern Montana where the scale varies on account of rates from St. Paul to North Dakota) are adjusted today on practically the same percentage basis as those at Missoula and Helena; and it may be stated that this basis is used generally in the adjustment of class rates throughout the Northwest on both state and interstate traffic, with the exception that on intrastate traffic in Montana, Idaho, Washington and Oregon class "C" rates are usually 30 instead of 35% of first class rates:

SCALE OF PERCENTAGE OF FIRST CLASS RATES FROM ST. PAUL

To	1	2	3	4	5	A	B	C	D	E
Spokane	100	86.8	73.1	63.1	53.1	53.1	41.6	33.3	31.6	28.4
Missoula	100	85	70	60	50	50	40	35	25	20
Helena										

In your decision of February 9, 1909, and in the supplemental one dated June 7, 1910, you contemplated and suggested in no uncertain language, changes in class and commodity rates to territory east of Spokane, and you pointedly inquired "What is to be done with rates east of Spokane?" Particular reference was had to Missoula.

To arrive at proper rates east of Spokane regard must be had, we believe, to the relative distances from St. Paul, a representative eastern point, and to the adjustments that have heretofore prevailed. Missoula is situated 286 miles east of Spokane (via St. Regis, Mont., and through which junction all freight over the N. P. Ry, is now transported to Spokane), and has enjoyed, until recent years, class rates materially

lower than class rates to Spokane. It is a distributing point of considerable importance, and comes into competition with Spokane in territory east of Spokane. Owing to this competition with Spokane on the west, and to that with Butte, Helena, etc., on the east, the territory in which Missoula can solicit and secure trade is very limited.

Unless the distance feature, as well as the competitive situation of the City of Missoula is given consideration in adjustment of rates with relation to Spokane, we doubt if any reasonable adjustment could be arrived at in the Montana common point district, and other Montana territory, at least it could not be done without flagrant discrimination against Montana. We believe, therefore, that it is proper and reasonable to ask for lower class rates for Missoula than exist at Spokane, and with such lower basis it will then be possible to arrive at more reasonable rates at other Montana points than have heretofore prevailed.

While class rates at Missoula have remained practically constant for a number of years and reductions have been accorded at Spokane from time to time, we do not believe that Missoula should receive the same percentage of reduction that has been granted to Spokane in the class rates, viz., 16⅔%, but our view is that the first class rate from St. Paul to Missoula should not exceed $2.10 per 100 pounds or 84 per cent of the Spokane rate. The class rates below first class should, we believe, be adjusted on a reasonable percentage basis, and that basis probably would be the existing one in Montana and which we have outlined on page 5 hereof. If the Montana percentage basis is used at Missoula in connection with the suggested rate of $2.10, the adjustment would be,

From St. Paul	1	2	3	4	5	A	B	C	D	E
	210	179	147	126	105	105	84	74	53	42

If the Spokane percentage basis were adopted, the rates at Missoula would become:

1	2	3	4	5	A	B	C	D	E
210	182	154	133	112	112	87	70	66	60

The local class rates of the Northern Pacific Ry., between Spokane and Missoula are:

1	2	3	4	5	A	B	C	D	E
124	105	87	74	62	62	50	37	31	25

and should probably have some influence in arriving at the differences between the class rates at Spokane and Missoula from the east.

Rates from St. Paul to Montana common points should be based, we believe, on about 78% of the rates from St. Paul to Spokane, and this would make, on basis of the Montana percentages, the following:

1	2	3	4	5	A	B	C	D	E
195	167	137	117	98	98	78	68	49	39

Rates at Great Falls should not be higher than those established at Lewistown, Montana, a competitive point on the Chicago, Milwaukee & Puget Sound Railway, and we would suggest that $1.90 would be a reasonable first class rate at both points, which would make the adjustment, on basis of the Montana percentages:

1	2	3	4	5	A	B	C	D	E
190	162	133	114	95	95	76	67	48	38

Rates at Havre, Montana, should be slightly less than those at Great Falls and we would suggest:

1	2	3	4	5	A	B	C	D	E
175	149	123	105	88	88	70	61	44	35

Rates at Glasgow, Montana, should, we believe, be:

1	2	3	4	5	A	B	C	D	E
155	132	109	93	78	78	62	54	39	31

Rates at Kalispell, Montana, should be adjusted on basis of the rates fixed for Missoula, Montana.

Rates at Billings should be:

1	2	3	4	5	A	B	C	D	E
170	145	119	102	85	85	68	60	43	34

At Miles City, 700 miles from St. Paul via the C. M. & St P. and C. M. & P. S. Rys., and 747 via the Northern Pacific Ry., we believe the rates should be:

1	2	3	4	5	A	B	C	D	E
150	128	105	90	75	75	60	53	38	30

Rates at Glendive, Montana, ought not to exceed:

1	2	3	4	5	A	B	C	D	E
140	119	98	84	70	70	56	49	35	28

Rates at all other stations in Montana to be graded in by the railroad companies.

Enclosed is a pen sketch showing locations of the cities enumerated herein, together with distances from Spokane. This may be of some assistance in readily determining their relative situations with respect to Spokane and to each other.

Rates from St. Paul should apply from all that territory known as "Missouri River Points," as specified in the present tariffs to Spokane.

Rates from Chicago and common points should be based on

the following arbitraries over the St. Paul rates.

1	2	3	4	5	A	B	C	D	E
40	34	26	17	14	17	14	11	10	9

Common Points to be those specified in the Spokane tariff.

Rates from St. Louis, and common points as specified in Spokane tariff, should be the following differentials under Chicago.

1	2	3	4	5	A	B	C	D	E
10	9	6	4	4	4	4	3	3	2

Rates from Detroit, Michigan, and common points as specified in Spokane tariff, should be the following arbitraries over the Chicago rates, governed by Western Classification.

1	2	3	4	5	A	B	C	D	E
15	12	10	6	5	5	5	4	3	3

Rates from Pittsburgh and common points, as specified in Spokane tariff, should be the following arbitraries over the Chicago rates, governed by Western Classification.

1	2	3	4	5	A	B	C	D	E
30	25	20	12	10	12	10	9	7	6

Rates from New York and common points, as specified in Spokane tariff:

1	2	3	4	5	A	B	C	D	E
60	50	40	25	20	25	20	17	14	13

Commodity Rates.

The decision of your honorable Board, of June 7, 1910, contemplates an adjustment of rates on commodities from eastern defined territories to Spokane on an inherently reasonable basis; and in arriving at these rates you had in mind, according to the decision, that a readjustment of rates to the intermountain communities was necessary.

We enclose herewith a statement covering all the existing commodity rates from St. Paul, Chicago, St. Louis, Kansas City, Omaha, to the principal commercial centers of Montana. The statement also shows rates from New York, Detroit and Pittsburgh, these rates being arrived at by using the carload class rate to either Chicago or St. Paul and the commodity rate beyond; for convenient comparison, where it is possible to insert the new rates from the same points of origin to Spokane on the same commodity, this has been done.

As indicated on the face of this statement, out of a total of 106 commodity rates shown from St. Paul to Helena, the average rate figures $1.00 per 100 pounds, or 17.7 mills per ton per mile; out of a total of 103 commodity rates shown from St. Paul to Missoula, the average rate figures $1.05 per

100 pounds, or 16.8 mills per ton per mile; and out of a total of 100 commodity rates shown from St. Paul to Miles City, the average rate figures 77.9 cents per 100 pounds, or 20.8 mills per ton per mile. Rates shown to other Montana Points will average equally as high.

The statement reveals, in many instances, remarkable relative adjustments as well as enormously high rates. In practically all instances rates from points east of St. Paul are merely the full combination of local rates through that junction; and it will be seen that while these rates are published as commodity rates, at those stations east of Helena there is practically no difference between the commodity rates and the established class rates on the same articles.

The statement is, we trust, comprehensive, and we will not attempt at this time to bring the details of it more forcibly to your attention.

We have suggested class rates that are based on the following percentages of the first class rate to Spokane

Missoula	84%
Montana common points	78%
Great Falls	76%
Havre	70%
Glasgow	62%
Billings	68%
Miles City	60%
Glendive	56%

Appreciating that there exist at Spokane conditions of competitive railroad and commercial character that do not prevail at all Montana points, we do not feel that it would be consistent to ask you to fix rates on commodities on the percentages specified for the class rates. However, we believe that Montana is entitled to a relative adjustment with that which will prevail at Spokane so as to permit of the movement of commodities from eastern territories on reasonable rates, and our firm conviction is that reasonable and uniform rates would be arrived at by using the following fixed percentages of the Spokane commodity rates as established, or to be established by your board.

Missoula Kalispell	90%
Montana common points	85%
Billings	70%
Miles City	60%
Great Falls	80% or *75
Havre	75%
Glasgow	65%

*In adjusting rates at Great Falls regard should be had to rates to be established at Lewistown, a C. M. & P. S. competitive opposite point; Lewistown would be entitled, we believe, to 75% of the Spokane rates and it probably would be advisable to permit the Great Northern Railway at Great Falls to meet the rates at Lewistown.

Enclosed is a statement which has been made up on basis of the percentages of Spokane rates, as suggested above, and this will readily indicate the resultant rates per 100 pounds and per ton per mile with the adoption of our suggestions. We believe the percentage plan suggested to be a comprehensive, simple, uniform and reasonable system of arriving at rates for Montana, and after a study of the statemnet which is attached, we trust you will see the merit in it.

We respectfully submit that this basis of percentages can be readily incorporated in the new Spokane tariff and be made applicable to rates from all the defined territories from which Spokane will have rates; and this would obviate the necessity of publishing a separate tariff on commodities for the State of Montana, and would have the further effect of preventing future discrimination against Montana as the rates in Montana would automatically adjust themselves with changes at Spokane.

Yours respectfully,
THE RAILROAD COMMISSION OF MONTANA,
(Signed) R. F. McLAREN, Secretary."

However, upon refusal of the Interstate Commerce Commission to grant the railroads a further extension of time beyond November 15th, 1911, application was made to the Court of Commerce for a restraining order, and same has been granted under date of November 10th, 1911, enjoining the Commission from enforcing the rates which were expected to become effective November 15th, until such time as the Court may pass upon the merits of the case.

CONCESSIONS IN FREIGHT RATES TO MUNICIPALITIES.

Section 5335 of the Revised Codes of Montana, provides:

> "A common carrier must always give preference in time, and may give preference in price, to the United States and to this state."

Section 22, Chapter 37, Laws of 1907, the Railroad Commission Law of Montana, provides as follows:

> "If any railroad subject hereto directly or indirectly, or by any special rate, rebate, drawback, or other device, shall charge, demand or receive from any person, firm or corporation, a greater or less compensation for any service rendered or to be rendered in the transportation of property subject to the provisions of this act, than that fixed by the State Board of Railroad Commissioners for such service, such railroad shall be deemed guilty of extortion, and shall forfeit and pay to the State of Montana, not less than five hundred nor more than two thousand dollars for each offense. Provided that nothing herein shall be construed as to prevent any railroad or railroad corporation from giving excursion rates to or from any point within or without the state."

Under date May 24th, 1911, the Chicago, Milwaukee & Puget Sound Railway Company made application to the Commission for authority to absorb a portion of the Northern Pacific Railway Company's switching charges on coal from Roundup, Montana, when consigned to the Miles City Lighting Plant. It will be observed that Section 5335 of the Revised Codes quoted above, specifies, "The United States and to this state," but does not accord to municipalities this same concession. The Commission was, therefore, obliged to deny the application of the carrier on the grounds that the laws of this state do not permit of special freight rates being made to other than the state itself, or to the United States. The federal law, however, permits on interstate traffic, of reduced rates to municipalities the same as the Montana law allows to the state or the United States.

The C. M. & P. S. Ry. Co., was of the opinion that the Montana statute would permit of their request being granted, and accordingly the Commission took the matter up with the department of the Attorney General, and we quote from his ruling as follows:

"Section 3805, Revised Codes, defines a corporation to be a creature of the law having certain powers and duties of a natural person. By the provisions of Section 3806, corporations are declared to be either public or private. Public corporations are formed or organized for the government of a portion of the state. All other corporations are private.

Section 22 above quoted, uses the word 'corporation' and does not distinguish between public and private corporations, and therefore the word 'corporation' used in the section includes both public and private.

Section 5335, Revised Codes, is the only section of our codes which in any wise limits Section 22 of Chapter 37, Session Laws 1907, in so far as this question is concerned, and that section applies only to the United States and to this state. The word 'state' cannot in my opinion, be given a construction broad enough to include a municipal corporation, and you are therefore advised that a railroad cannot absorb the switching charges on freight assigned to a municipal corporation or extend to such corporation, any greater rights or privileges in the transportation of freight, than it extends to the general public."

This Commission believes that it was the intent of the Legislature when Section 5335 was enacted, to give to municipalities the same privileges as to the State of Montana, but the law itself does not so state, and the Commission must be governed by the specific reading of the statute. It is not our policy to place obstructions in the nature of technicalities in the way of common carriers, and we regret that our action in refusing to authorize the absorption of switching charges requested by the C. M. & P. S. was mandatory under the law, and in explaining our position to the City of Miles, and to the C. M. & P. S. Ry. Co., it was our suggestion that the Montana law be amended at the next session of the Legislature so as to permit of lower rates being accorded municipal governments, the same as may now be accorded the State of Montana. Until this is done, we must be governed by the opinion of the Attorney General as herein expressed.

MISQUOTING RATES.

Probably no one cause contributes more to the number of grievous complaints against carriers than misquoted rates by carriers' agents. It is true that tariffs are required to be posted for the information of the public but we all know how difficult it is, and practically impossible in many instances, for one unfamiliar with the compilation of rate schedules, to take the tariffs in his own hands and determine therefrom the correct and current rates, minimum weights, tariff requirements, etc. The result is that the prospective shipper will inquire of the railroad company's agent as to the proper rate, etc., and will be governed accordingly, without further confirmation. In fact, if the agent cannot be depended upon, through ignorance, carelessness or otherwise, to correctly interpret the tariffs, how can we expect the shipper, who may never have seen a tariff before, to do so. He must take it for granted that the agent is right.

It is of very frequent occurrence that the shipper is erroneously informed, but he does not know this until after his goods have arrived at destination, or held up at some intermediate point for the payment of additional charges. There is only one thing for him to do, and that is to put up the additional amount, whether it be right or wrong, and present his claim later. Errors of this kind are more numerous on interline business and particularly noticeable on shipments of household goods, the detention of which in transit works a serious hardship upon the owner, waiting under expense with his family, at some isolated station for the arrival of his car, which usually contains in addition to household effects, a few head of stock.

The fact of the carriers' agent having quoted the wrong rates does not relieve the shipper from paying the legal rate on file with this Commission. Section 22 of the Railroad Commission law prohibits the acceptance of a greater or less compensation, in the following language:

> "If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device shall charge, demand or receive from any person, firm or corporation, **a greater or less** compensation for any service rendered or to be rendered, in the transportation of property subject to the provisions of this act, than that fixed by the said Board

of Railroad Commissioners for such service, such railroad shall be deemed guilty of extortion. * * *"

Hence the shipper is legally bound to pay the published rate even though it may be twice or three times as much as quoted him at point of origin. Had he been correctly informed in the first place, it is quite likely that he would have disposed of, rather than ship, a portion of his goods and purchased new in his new location, but being obliged to pay extra charges after the shipment has moved, leaves him at a financial loss and without recourse.

On interstate traffic, the Act to Regulate Commerce, amended June 18th, 1910, provides a penalty of two hundred and fifty dollars for the misquotation of a rate, which amount shall accrue to the United States in a civil action brought by the United States. This was intended to cause carriers to be more careful, but it does not in any way make reparation to the shipper for his loss.

There does not appear to be an adequate remedy at hand to overcome this situation. Legislation has been advocated in some states, whereby the misquoted rate must govern, while others recommend a law giving the injured shipper the right to collect damages in a given sum; but speaking for our own state, neither of these propositions would furnish relief, as we view it. There can be but **one legal rate,** and that must be the authorized and published rate on file with the Commission; thus it would seem that, regardless of further suggested legislation, the acceptance of a greater or less amount by the carrier, would be held by the courts to be discriminatory, and that such a law would be a retrograde step in the direction of the former vicious practice of rebating.

The only recommendation that we can make is to require the railroads to **simplify their tariffs,** to the end that you or I may readily determine the correct rate between given points, and this solution of the difficulty is now being given much consideration by the National Association of Railway Commissioners, being directly dealt with by the Committee on "Uniform Classification and Simplification of Tariff Sheets."

Subject: Minimum Agricultural Implements.

Minneapolis Traffic Association,

vs.

Northern Pacific Railway Company, and Chicago, Milwaukee & Puget Sound Railway Company.

Northern Pacific Tariff 619-B, applying between stations on the Northern Pacific Railway, and stations on the Chicago, Milwaukee & Puget Sound Railway, provides minimum of 24,000 pounds on agricultural implements, whereas the local tariff of each company names minimum weight of 20,000 pounds on this commodity.

Complainants are interested in the movement of agricultural implements from points on the N. P. Ry. to points on the C. M. & P. S. Ry., and felt that inasmuch as the local tariffs of both companies provide for a lower minimum than joint tariff 619-B referred to above, there was no good reason why the latter should not be amended, making minimum of 20,000 pounds.

Heretofore, so far as the Commission is informed, there has been no movement of agricultural implements between the two lines, but with the development of the country along the line of the C. M. & P. S., complainants assured us that there would be considerable, provided the minimum were placed on a lower basis; accordingly the matter was taken up with the traffic department of both companies, and it being agreeable to establish a joint minimum of 20,000 pounds, an amendment was issued effective on both state and interstate business fully satisfying this complaint.

Subject: Overcharge.

Kessler Brewing Co.,

vs.

Northern Pacific Railway and Chicago, Milwaukee & Puget Sound Railway Companies,

Complainants are brewers at Helena, Montana, and on Sept. 21st, 1911, called upon the Commission and presented all papers bearing upon a claim against the above named carriers, alleging overcharge on several cars of beer from Helena to Harlowton, Montana, on various dates. The claim had been declined by the carriers.

Northern Pacific Tariff No. 22506 carried a provision under which the general distance tariff rates applied between stations on the Northern Pacific and stations on the Montana Railroad (now C. M. & P. S.), and also provided that the distances to be used on the Montana Railroad were those contained in N. P. tariff 23097, this latter issue naming the distance from Lombard to Harlowton as 95 miles.

The line from Lombard to Harlowton was changed and shortened; effective August 25th, 1908, the C. M. & P. S. Ry. Co., issued its official table of distances, P. C. L. 30-A, in which the new mileage from Lombard to Harlowton was shown as 92.8 miles, the same being correct. N. P. Tariff 23097 should have been amended, and effective at the time C. M. & P. S. 30-A became effective, viz., August 25th, 1908 This, however, was not done, and on account of this omission, complainant had been required to pay one cent per hundred pounds higher freight rate than should properly have been charged using the correct and actual distance of 92.8 miles.

Failure to amend N. P. Tariff 23097 was no doubt an oversight, but this oversight should not operate to the detriment of these shippers, and while the law provides that the proper and lawful rate is that on file with this Commission, yet the Commission held that to charge more than that based on the actual distance as corrected, notwithstanding that the tariff had not been changed to correspond, constituted an overcharge, and the full amount of the claim aggregating $146.08 was paid.

Subject: Grain Rates.

Shields River Valley Farmers,

vs.

Northern Pacific Railway Co.

This was a verbal complaint, and was more in the nature of an inquiry as to why grain shipped from points on the Shields River Branch of the Northern Pacific Railway to Minneapolis and other eastern terminals, should take a rate 2½c per cwt., higher than was charged on the same commodities from points on the main line of the Northern Pacific as far west as Lombard, Montana, to the same eastern terminals.

The Shields River Branch has only been in operation about two years, and at the time rates were named from stations on said branch, it was thought that the conditions warranted a slight arbitrary over main line points for the same mileage. The Shields River Valley is devoted entirely to agriculture and stock raising, and since the advent of the railroad, the acreage under cultivation has increased rapidly, with the result that now that feeder of the Northern Pacific produces and ships its proportion of the agricultural products of the state.

It seemed to the Commission, therefore, that the reasons for this arbitrary of 2½c did not now exist, and while the matter was not handled in a formal way, the railway company concurred in our views of the situation, and agreed to and did make the same rate on grain from Shields River Valley stations to Minneapolis, Duluth, etc., viz., 35c per cwt., as applies from points as far west on its main line as Lombard, Montana.

Subject: Rates on Brass and Iron Beds.

Metropolitan Furniture Company,

vs.

Great Northern Railway Company, et al.

Complainant shipped a car of brass and iron beds with woven wire springs, from Utica, N. Y., to Great Falls, Montana, and paid freight charges thereon at rate of $1.57 per cwt., and alleged that this charge was excessive in that the classification provided "5th class rate ,which is $1.45 per cwt."

There was no overcharge on this shipment. The Official Classification does not provide for 5th class, Utica to Chicago or St. Paul on this commodity, but does provide for 20% less than 3rd class rates minimum 16,000 pounds, this weight applying on cars 36 feet in length, and increasing on cars of greater length. The rate from Utica to Chicago is 32c (this being 20% less than 3rd class); from Chicago to Great Falls there is a commodity rate of $1.25, minimum 20,000 pounds, making as it will be observed, a through rate of $1.57 per cwt., as charged.

It is true that the Western Classification names 5th class rate with minimum 30,000 pounds on these articles, but by using the rate to Chicago, plus the commodity rate thence to Great Falls as referred to above, a lower rate is obtained than by using the class rates west of Chicago. $1.57 per cwt., is the lowest rate that can be figured, same being one cent lower than based on St. Paul, to which point, the rate from Utica is 53c, thence to Great Falls, 5th class, $1.05, making $1.58 per cwt., through.

Subject: Rate on Gypsum Rock.

Montana Hard Wall Plaster Company,

vs.

Great Northern Railway Company.

Complainant operates a cement mill at Monarch, Montana, on the Neihart Branch of the Great Northern Railway. From Monarch to stations on the Great Northern beyond Great Falls, the rate on cement plaster is the same as from Great Falls, at which latter point, the United States Gypsum Company also operates a mill. The Monarch plant obtains its supply of gypsum rock (the raw material), from the hills adjoining the mill. The Great Falls plant brings the gypsum from Riceville by rail.

Complaint related that there was a market for gypsum rock at Trident, Montana, Concrete and Metaline Falls, Wash., to which points defendant had made a through rate from Riceville, but had declined to apply the same rate from Monarch. When the Commission took the matter up with the defendant, the latter proposed rates from Monarch on this commodity two cents per hundred pounds over Riceville. This was unsatisfactory to the Monarch people, who contended that there was no good reason why an arbitrary over Riceville should be demanded, inasmuch as the rate on plaster, the finished product, from both mills was the same, and stated that if the Great Northern Railway would not publish the same rates from Monarch, that a formal complaint would be made to the Interstate Commerce Commission at Washington.

It appeared to us that the complainant's position was well taken, and upon further consideration, the defendant agreed to and did make the same rates from Monarch as from Riceville to the stations named.

Subject: Alleged Overcharge.

Walter Junkins,

vs.

Western Classification.

Complainant caused to be shipped from Brookings, S. D., to Helena, Montana, a consignment of automobile tire treads in bundles, on which double first class rate was charged, and alleged that the charges were excessive owing to the classification.

Western Classification provides first class on these articles when boxed, and double first class in bundles, therefore the rate assessed was correct, and in advising the complainant to this effect, we suggested that if any more such shipments were made, that they be boxed and thereby get the benefit of the lower rate.

Subjct: Overcharge.

Dr. F. J. Adams,

vs.

Wells, Fargo & Co. Express.

Complainant made a shipment of plants from Rutherford, N. J., to Great Falls, Montana, routing instructions Wells, Fargo & Company Express to Chicago, thence Great Northern Express to destination. The shipment did not move via route indicated, but was handled by the Wells Fargo Company to Judith Gap, Montana, at which point it was turned over to the Great Northern Express for movement to destination.

Dr. Adams' complaint alleged that had the routing instructions given by consignor been observed, the charges would have been less than through Judith Gap.

Upon investigation, it was found that the lowest through rate that could be applied was via Chicago, which charge would apply either via the Wells Fargo or Great Northern, and the fact that the latter got the short haul on this shipment, did not affect the through rate. An overcharge of $1.39 existed, which amount was refunded to claimant.

Subject: Classification Talking Machines.

Montana Phonograph Company of Helena, Montana,

vs.

Western Classification.

Docket of the Western Classification Committee of matters to be considered at its meeting commencing July 18th, 1911, at Milwaukee, contemplated under Item 2884, changing the classification on talking machines to provide double first class, "Enclosed in Cabinets," or "Cabinets boxed."

A protest was filed with the Commission by this complainant, taking exception to the contemplated change, and citing pianos, piano players, automatic pianos, cabinet organs, etc., as being of greater value and involving greater liability to the carrier than the Edison Phonograph, the former taking first class, while the proposed change under Item 2884, would place the Edison Amberola in double first class.

Complainant averred that the Amberola is primarily a "talking machine," and not in any sense a piece of furniture, nor has it any utility as furniture, any more than a piano or organ. Our investigation disclosed that this instrument consists of a motor and concealed horn with other mechanical devices for the reproduction of sound. The case in which the instrument is enclosed, is merely a covering for the mechanism, in the same manner as the case of a piano or organ protects the mechanism of this instrument, and that the Amberola case or cabinet must be high enough to permit of the mechanism being readily reached, and in this way a space is provided below for holding the records.

It appearing to the Commission that the proposed advance in classification was unwarranted in view of the rating of other musical instruments cited the matter was presented to the Chairman of the Western Classification Committee meeting, setting forth the reasons why it appeared to us that the advance should not be made, and at the meeting in July, the objections brought by the complainant through this Commission, were considered, with the result that the classification was not advanced.

Subject: Storage Charges on Baggage.

George H. Abbott,

vs.

Chicago, Burlington & Quincy R. R. Co.

This complaint stated that the defendant's agent at Billings checked a trunk to Worland, Wyoming, instead of to Bowler, Montana, and that the trunk was being held by the agent at Worland for the payment of storage charges accrued at that station. Complainant felt that inasmuch as the error was that of the carrier, he should not be required to pay storage for which he was in no way responsible.

The matter was referred to the Commission on Sept. 15th. The facts in the case were presented to General Passenger Agent of the Burlington Company, and complainant advises under date Sept. 23rd, that he has now received his trunk without the payment of storage charges. The investigation indicated that the railway company's agent at Worland was not familiar with the manner in which the trunk was shipped to his station.

Subject: Demurrage.

Neihart Lumber Company,

vs.

Great Northern Railway Co.

Complainants, dealers in lumber and building material at Belt, Montana, complained that during the months of March and April, 1911, they had shipped in a considerable quantity of lumber with the understanding that the railway company would, before this material arrived, complete a private spur track which had been arranged for, but the track was not put in, consequently the unloading was done from the house track, entailing some detention to cars resulting in demurrage amounting to $32.00. Complainants asked that the demurrage be ordered cancelled on the grounds that had this private track been put in, they would have unloaded all cars within the free time allowed.

The Great Northern Railway Company claimed that the negotiations had with the lumber company for a spur track, did not in any way affect this question of demurrage, and declined to cancel the charges. Whether or not a definite understanding was had between the parties hereto relative to a private unloading track, the Commission is not empowered to order the cancellation of demurrage accruing under the established and published rules, and which do not provide for the waiving of demurrage charges pending the construction of additional or private unloading facilities, and complainants were advised that unless the cars in question arrived bunched, due to the fault of the carrier, the demurrage had been properly assessed, and could not under the schedule, be refunded.

Subject: Alleged Overcharge.

W. R. Bainbridge, and W. A. Bent,

vs.

Northern Pacific Railway Co., et al.

These complainants jointly shipped from Grinnell, Iowa, to Bridger, Montana, August 22nd, 1911, two cars of sheep via the Iowa Central, M. & St. L. and Northern Pacific, and stated that the agent at Grinnell quoted rate of 44c through to Bridger via the above route, but after having quoted this rate of 44c, the two cars were billed out at 67c per cwt., minimum 12,000 pounds, making the charges on each car $80.40. Further, it was complained that upon arrival at Bridger, the charges were raised by the agent at that station to $101.00 per car.

Evidently the agent at Grinnell made an error, as there is no such rate as 44c, but the fact of his having quoted an incorrect rate, does not under the rulings of the Interstate Commerce Commission, relieve the shipper from paying the rate which was on file with the Commission at Washington. Our investigation developed that these complainants had not been overcharged.

Subject: Overcharge on Hay.

M. A. Cromwell,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

Complainant shipped a car of hay from Soudan to Missoula, August 18th, 1911, on which charges were assessed and paid at rate of 11c per cwt., minimum 24,000 pounds.

Complaint related that the rate per hundred pounds appeared to be excessive, and that the actual net weight of the shipment was 19,960 pounds.

There is no agent of the railway company at Soudan, and the car in question was ordered by telephone from the agent at Missoula. Nothing was said as to the size or capacity of car wanted, and one of the largest box cars was furnished, the minimum on which is 24,000 pounds. Had the shipper specified that he wanted a smaller car, this hay could have been loaded into a car taking 20,000 pounds minimum. It was the shipper's oversight in not specifying what kind of a car he required for this load. The rate, however, of 11c was the result of an error in billing. The correct rate from Soudan to Missoula is 6c, making an overcharge of 5c per cwt., amounting to $12.00 on this shipment. The overcharge was promptly refunded when the matter was presented by the Commission.

Subject: Overcharge on Household Goods.

J. F. Dott,

vs.

Chicago, Milwaukee & Puget Sound Railway Company.

Complainant in this case shipped a car of household goods from Sun Prairie Wisconsin, April 29th, 1911, consigned to himself at Shawmut, Montana. Car arrived at destination May 7th, on which charges were assessed and paid in the sum of $203.40.

On May 9th, complaint was made to the Commission, alleging overcharge, and stating that the net weight of this car was 24,950 pounds. Investigation showed that the rate per hundred pounds from Sun Prairie, Wis., to Shawmut, on household goods in carloads, was 56½c per cwt., minimum 20,000 pounds. It was also found that charges had been assessed on 36,000 pounds, at the correct rate of 56½c. No explanation has been offered as to why charges were collected on this excess weight of 11,050 pounds, but the defendant promptly made refund in the sum of $62.43, which is correct, when the matter was presented by the Commission.

Subject: Overcharge on Emigrant Movables.

John M. Redfield,

vs.

Great Northern Railway Co.

Complainant is a resident of Glasgow, Montana, and on April 4th, 1911, shipped from Eleva, Wisconsin, to Glasgow, Mont., a car of emigrant movables and stock via the Chicago, St. Paul, Minneapolis & Omaha Railway, and the Great Northern Railway. This car was weighed on track scales at Altoona, Wis., and the net weight was 36,300 pounds.

The rate on emigrant movables, Minnesota Transfer to Glasgow, was at that time, 27c per cwt., and upon arrival at destination, the Great Northern Railway Company assessed an additional charge of $1.01 per cwt., on 3200 pounds of bulk oats, for the reason that this quantity was contained in the car in excess of the allotted "50 bushels for seed, and necessary feed for stock in transit."

No credit, however, was given by the Great Northern Railway on the net weight of the shipment. It was admitted that the rate of $1.01 per cwt., on the excess quantity of oats, was properly assessed, but in view of the fact that the scale weight as determined at Altoona, was 36,300 pounds, and included this excess of oats, a deduction should have been made, which would leave 33,100 pounds at rate of 27c figuring an overcharge on the shipment of $8.64.

Investigation showed that there had not been an undercharge on the C. St. P. M. & O., for the reason that the tariff under which the shipment moved over that line permitted "Seeds for planting purposes," and the Great Northern Railway Company made refund to complainant of the above amount, August 23rd, 1911.

Subject: Routing Instructions.

Royal Milling Company,

vs.

Great Northern Railway Co.

Complainant is engaged in the milling business at Great Falls, Montana, and complained to the Commission on July 3rd, 1911, that during the year 1910, they shipped five cars of flour from Great Falls to Columbus, Montana, routing instructions given on bills of lading "care of N. P. Ry., Billins." Having discovered their mistake in routing via Billings, claim was presented for the difference between the freight charges via Billings and via Great Northern Junction. Complainants took the position that the defendant should have known that the routing instructions were in error, and should have handled the cars via G. N. Junction, thus giving the shippers the benefit of the lowest rate.

The defendant had, of course, declined the claim, and we were obliged to inform the milling company that in view of the fact that routing was specifically given on the bills of lading, the carrier could not do otherwise than observe such instructions, even though it involved a longer haul and a higher freight rate. Had the carrier ignored these instructions and moved the shipments through G. N. Jct., instead of through Billings, they would have been responsible for any loss which might have been thereby entailed, and the carrier must assume that the shipper knows what he wants when he specifies routing via any particular junction.

Had the bills of lading not specified any routing, then the cars would undoubtedly have been handled through G. N. Jct., and in fact the complainant would have been entitled to the rate through that junction instead of through Billings, even though the cars might have been handled into Billings at the carrier's convenience.

Subject: Lumber Rates.

Enterprise Lumber Company,

vs.

Great Northern Railway Co.

Complainant in this case is engaged in the saw mill business at Kila, Montana, located on what is known as the Marion Branch of the Great Northern Railway in Flathead County, and complained to the Commission on June 23rd, 1911, that under G. N. tariff G. F. O. No. 22407, which became effective April 23rd, the rates on lumber were advanced from Kila to stations located between Highgate and Shelby, Montana, by placing Kila on the same basis as Athens, whereas prior to G. F. O. 22407, Kila enjoyed the same rates as Kalispell.

Tariff G. F. O. 22407 superceded G. F. O. No. 19076, and this Commission was not aware that any rates had been advanced by the adoption of the new tariff, but on the contrary, some had been reduced. Investigation developed that the station of Kila was formerly known as Sedan, and was so listed in Tariff G. F. O. 19076, and that Sedan, did, under the superseded tariff, enjoy the Kalispell rates. No mention was made of Kila in No. 22407, and accordingly the lumber rates from Athens would apply, Kila being an intermediate station.

It was quite apparent that the Great Northern Railway Company had not intentionally advanced the rates from Kila, and when the situation was explained to Mr. H. A. Jackson, Assistant Traffic Manager, a supplement was promptly issued to Tariff 22407, reinstating the rates formerly in effect from Kila, or Sedan as it was then known, making same retroactive to the date on which the higher rates went into effect, thus enabling the complainant in this case to obtain reparation on shipments which had moved subsequent to April 23rd.

Subject: Storage Charges.

J. Lichliter,

vs.

Great Northern Railway Co.

Complainant is a rancher in the vicinity of Monarch, Montana, and on April 3rd, 1911, there was shipped to him from Great Falls, a consignment of fence wire and staples. On account of the condition of the roads, complainant was unable to take this shipment away from the defendant's depot until the early part of June, and was required to pay to the defendant's agent at Monarch, $3.45 storage charges.

It was in regard to this latter item that complaint was made, alleging same to be excessive. Tariff of the Great Northern Railway Company provides for a storage charge of five cents per hundred pounds for each thirty days or fraction thereof that the property remains undelivered subject to a minimum charge of 25 cents for each shipment. Accordingly the proper charges should have been $1.98, and the difference between that figure and $3.45 was refunded to complainant. The incorrect charge was the result of a clerical error.

Subject: Classification Emigrant Movables.

A. B. Hood,

vs.

Great Northern Railway Co.

Complainant shipped a car of emigrant movables from Portland, Oregon, to Chester, Montana, March 22nd, 1910, and was quoted by the defendant's agent at Portland, rate of 85c per cwt., minimum 20,000 pounds. There is no complaint as to this quotation the rate and minimum being in accordance with the published tariffs, but on arrival at destination, complainant was required to pay $63.75 freight charges on 27 sacks of feed and 36 spools of barb wire contained in the car, which the carrier had classified as contraband under the emigrant movable rate.

Complainant denied that he had 27 sacks of feed and that the sacks in question contained some feed for stock in transit, and a sufficient margin to provide for immediate needs upon arrival at Chester, and the balance of the sacks contained bedding, clothing, harness, etc. Complainant admitted that the 36 spools of barb wire were purchased in Portland, but contended that same should not be classified as contraband inasmuch as the emigrant movable tariff under which this shipment moved, permitted "Property of an intending settler only, and will include tools and implements of calling. * * * Lumber and shingles fence posts, * * feed for live stock while in transit and household goods, but does not include general merchandise nor any articles whether herein enumerated or not which are intended for sale or speculation." Complainant took the position that wire for fencing should be permissable in view of the fact that the classification authorized fence posts; that one was of no use without the other, and that fences on his homestead were quite as necessary as a kitchen range or any other article of household goods.

The Great Northern Railway Company, however, denied the claim, and the shipment being interstate, a formal complaint was prepared in this office to the Interstate Commerce Commission at Washington, setting forth the facts as stated above, and asking for reparation in the sum of $63.75, or such other relief as the Commission might deem consistent.

This case was heard before Special Examiner Pugh at Helena, Montana, November 3rd, 1910, at which time the

complainant was not available to furnish his testimony, and in view of the fact that the defendant presented statements from their inspectors to the effect that the 27 sacks of "feed" did actually contain feed, counsel for complainant was forced to concede this point, having no sworn statement to offer in rebuttal. As to the 36 spools of barb wire, however, this was simply a question of classification, and in its findings, the Interstate Commerce Commission held "that the complainant was entitled to include in his shipment of emigrant moveables a reasonable quantity of barb wire, and it does not appear that the 36 spools in question was in excees of such quantity."

It was agreed between the parties to this case that the total net weight of the car including the 36 spools of barb wire (the latter weighing 3600 pounds) did not exceed the minimum weight of 20,000 pounds as allowed in the tariff, and it was therefore ordered that the defendant pay to complainant by way of reparation, the sum of $45.00 with interest from April 1st, 1910.

Subject: Routing Express Shipments.

Clark & Corwin,

vs.

American Express Co.

These complainants, merchants doing business at Park City, Montana, complained that a shipment by express from Milwaukee consigned to themselves at Park City, was handled by the American Express Company to Butte, thence Northern Express to destination, and claiming an overcharge, as a more direct route and better rate could be secured had the American Express Company delivered the shipment to the Northern Express at St. Paul, Minn.

The Commission took the position that if the American Company wished to handle this package via Butte, it should shrink its charges so as to equal the charge via St. Paul. The defendant did not offer any argument in rebuttal of this claim, and same was promptly paid.

Subject: Overcharge on Shipment of Horses.

A. A. Lehrman,

vs.

Great Northern Railway Co.

Complainant made a shipment of one carload of horses April 30th, 1907, from Chester, Montana, to Mondak, Montana, on which charges were assessed and paid at rate of 48c per cwt., the net weight of the shipment being 26,620 pounds, making total freight charges $127.77.

The matter was not taken up with the Commission until February 16th, 1911, when complainant asked to be advised if an overcharge did not exist. Our investigation developed that at the time this shipment was made, there was in effect a tariff naming rate of $68,20 per 33' car on horses from Chester to Mondak. Cars of greater length to be charged at 3% additional for each additional foot or fraction thereof. The car in question was 39' 6" in length, and would figure on the above basis, 121% of the 33' car rate, or $82.52, making an overcharge of $45.25.

The case was placed before the railway company by the Commission on March 7th, claiming the application of the lower rate, and amount of overcharge was refunded to complainant on June 20th, 1911.

Subject: Wood Rates.

Bernice, Montana, Residents of,

vs.

Great Northern Railway Company.

Effective Sept. 28th, 1910, Supplement No. 14 to G. N. Tariff 21486, promulgated a mileage distance tariff on cord wood between all points within the state, thereby cancelling a number of commodity rates on wood which the Commission was given to understand were merely paper rates at the present time, for the reason that there was not now, and had not been for some time past, any movement thereunder. It is the practice of all railroads to cancel rates which are no longer used, in order to keep their tariffs lined up and avoid burdening the schedules with unnecessary quotations.

Based upon the information given by the railway company, the Commission authorized the discontinuance of a commodity rate of $1.15 per cord from Bernice to Butte the rate under the new mileage distance tariff being $1.50, which would not, of course, make any difference as long as there was no wood being shipped.

However, on April 19, 1911, a petition was presented to the Commission, signed by a large number of wood shippers in the vicinity of Bernice, protesting against the advance, and stating that under the present rate of $1.50, they were unable to place their product upon the Butte market in competition with other camps. The matter was at once taken up with the railway company, and upon the showing that the impression given the Commission at the time the commodity rate of $1.15 was cancelled, was erroneous, it was agreed to reinstate the former rate, which was done, same becoming effective May 12th, 1911.

Subject: Overcharge, Passenger Fare.

E. F. Rice,

vs.

Chicago, Burlington & Quincy Railroad Company.

The above named complainant was a passenger on the Chicago, Burlington & Quincy Railroad May 3rd, 1911, from Billings, Montana, to Thermopolis, Wyoming. On that date, the Chicago, Burlington & Quincy was operating over what is known as the "Scribner-Fromberg Cut-Off," which lessened the distance between Billings and Thermopolis 60 miles as compared with the old line via Toluca the latter having been abandoned upon completion of the cut-off.

The conductor required complainant to pay mileage via the old line stating that his instructions were to that effect until further advice. Complainant protested, and referred the matter to the Commission on May 16th.

It appearing that the conductor was in error, we took the matter up with the general passenger agent of the Burlington at Omaha, calling attention to Northern Pacific Tariff "M" No. 3, I. C. C. No. 166, under which the mileage held by the complainant was issued reading as follows:

> "Except as otherwise specifically provided herein, mileage detachments will be made mile for mile for distance traveled, detachments not to exceed the local ticket fares between same points,"

and in addition cited C. B. & Q. I. C. C. 2386, issued April 20, 1911, naming distances from Billings to stations on the C. B. & Q., including Thermopolis, the latter being shown as 194.9 miles, and providing further, "Fares in this column apply via newly constructed line to and from which no fares have heretofore been in effect, and are effective April 24, 1911, under Rule No. 57, Tariff Circular 18-A."

The defendant without comment, promptly made refund of the overcharge, viz., 60 miles at 2½c per mile, which was the figure at which the mileage book held by the passenger, was sold.

Subject: Excess Baggage.

Alec Wardlaw,

vs.

Northern Pacific Railway Co., et al.

This complainant, a resident of Helena, Montana, arrived in New York March 16th, 1911, from Scotland, and purchased two tickets for himself and wife, New York to Helena. They had three pieces of baggage, the aggregate weight of which was 290 pounds. Two pieces were checked from the Anchor Line sheds, and both tickets cancelled, "Baggage checked." Having occasion to use some of the articles in the third trunk, same was not checked until later in the day from Courtlandt Street Station. Mr. Wardlaw's transportation having already been cancelled, "B. C.," the agent at Courtlandt street attached a C. O. D., for $8.20, being the excess baggage rate, the trunk weighing 85 pounds.

On arrival at Helena, complainant paid this excess and explained the circumstances to the Commission. Our investigation developed the facts as stated, and Mr. Geo. W. Hay, General Baggage Agent of the Lehigh Valley Railroad Company promptly made reparation of the full amount.

Subject: Excess Passenger Fare.

J. B. Meunier,

vs.

Great Northern Railway Co.

The above named was a passenger on April 9th, 1911, between Kalispell and Somers, Montana. He was unable to procure a ticket at Kalispell on account of the agent being engaged in handling baggage and express up to the time the train was ready to leave. When he paid his fare to the conductor, ten cents additional was collected, a receipt for which was given to the passenger, but same did not provide for refund of the extra charge.

Complainant felt that this was an injustice and complained to the Commission. On Sept. 10th, 1909, the Great Northern Railway Company had issued a supplement to its passenger tariff providing as follows:

> "Conductors will discontinue collecting ten cents extra fare from stations where tickets are on sale LOCALLY IN THE STATE OF MONTANA. This does not apply on interstate traffic on which business the cash fare penalty will still be collected."

In view of the above, it was not clear why the conductor in this case should require the passenger to pay the penalty of ten cents, and the railway company explained that the conductor was in error, and had misunderstood his instructions. Accordingly, a circular was issued notifying all concerned, that no penalty would be collected within the State of Montana, and refund of the overcharge in this particular case was made to the complainant.

Subject: Scale Weights on Coal.

Joseph Peters,

vs.

Oregon Short Line Railroad Company, et al.

The complainant is engaged in the coal business at Anaconda, Montana, under the name of the Washoe Coal Company, and on May 25th, 1909, took up with the Commission the matter of scale weights on coal from Diamondville, Wyoming, to Anaconda, Montana, alleging that certain cars of coal had been weighed on the scales of the B. A. & P. Ry., at Anaconda, and that such weights showed a considerable discrepancy in comparison with the billed weights obtained on the scales at Diamondville, the point of origin.

An investigation was made which determined that the shortage actually existed, but the carriers declined to make any adjustment on the grounds that the tariff under which this coal moved, contained the following clause:

> "Item No. 8, Weighing Coal. Charges must be assessed by using weights obtained by weighing over track scales at point of origin, subject to minimum weights provided in tariff. In weighing coal, billing agents must show gross, tare and net weights on all way-bills in the usual way, and must indicate in every case, whether actual or marked tare is used. Shipments covered by such way-bills must not be re-weighed."

It will be noted that the movement was interstate, and accordingly, a formal complaint was prepared by this Department, Sept. 1st, 1909, and presented to the Interstate Commerce Commission, alleging that the regulation quoted above governing the weighing at destination, was unreasonable and unjust, and asking for reparation in the sum of $147.78, same being the amount paid by complainant in excess of the alleged correct charges, on basis of Anaconda weights, the shortage aggregating 90,940 pounds of coal.

The Interstate Commerce Commission held that "The actual weight of shipments constitutes the true basis upon which to assess transportation charges. The question is one of fact. The provisions in the tariffs that 'shipments covered by such way-bills must not be re-weighed,' is in our opinion, a manifestly unjust and unreasonable requirement, and constitutes no valid defense in a case where the question at issue is the

correct weight upon which transportation charges are to be assessed. Upon the record, we are of the opinion, and find that the charges assessed and collected, were unreasonable to the extent that they exceed charges that would have accrued if assessed upon the actual tonnage of the shipments as shown by the evidence."

An order was entered requiring the Oregon Short Line Railroad Company to cease and desist from enforcing the requirement of its tariff provision, held to be unreasonable and unjust, and awarded reparation to complainants in the sum stated above, viz., $147.78, with interest from March 1st, 1909.

Subject: Overcharge on Ties.

Mike Mungas,

vs.

Northern Pacific Railway Co.

This was an informal complaint, and related that in the months of April, June and July, 1910, four cars of ties had been shipped from Philipsburg to the Missoula Street Railway Company at Missoula. Two of these cars were weighed on the track scales at Missoula, but the other two inadvertently had not been weighed at any point, and freight charges on the latter were assessed on basis of an estimated weight.

Complainant took exception to said estimated weights, but was unable to affect an adjustment with the railway company, and on August 23rd 1910, took the matter up with the Commission. Much correspondence ensued, there being a difference of opinion as to the number of ties that were contained in each of the cars which had not been weighed. However, after assembling all of the facts, it was apparent beyond a reasonable doubt, that there had been an overcharge in weight on the two cars not weighed, while on the other hand, the agent at Missoula had made an error in assessing charges on one of the cars which had been weighed, using the actual scale weight, which was less than the minimum provided for equipment of that class.

On these four cars, rate of 10c per cwt. had been assessed and paid, whereas the railway company had amended its tariff from Philipsburg to Missoula applying on ties, to 7½c per cwt. entitling complainant to reparation of 2½c per cwt. amounting to, including the over-weight, $52.06, which amount was paid by the defendant company May 18th, 1911.

Subject: Demurrage.

Yellowstone Park Transportation Co.,

vs.

Oregon Short Line Railroad Company.

On January 30th, 1911, the Yellowstone Park Transportation Company presented to the Commission, a file of correspondence with the Montana Demurrage Bureau, in regard to an outstanding bill amounting to $127.00 demurrage on certain cars loaded with oats consigned to the complainant at Yellowstone, the west entrance to the Yellowstone National Park, which they alleged was unfair on account of the intermittent service rendered by the railroad company over its branch line from Idaho Falls to Yellowstone. Complainants took the position that had this service been daily or even tri-weekly, this demurrage, at least the greater portion of it, would have been avoided.

The Commission assembled all data necessary to make an analysis of the charges against each car, and it was found that notwithstanding that the railroad service had been irregular, some of these cars had not been made empty, and were therefore held under load or partially so by the consignee, when the railroad company applied for their release. On certain other cars, it was found that the demurrage accrued by reason of bunching in transit, to the extent that the bill for $127.00 should be reduced to $71.00, same being the amount for which the Transportation Company was responsible. A corrected bill was accordingly rendered and paid.

Subject: Overcharge.

O. N. Kimball,

vs.

Great Northern Railway Co.

Complainant made a shipment of household goods from Havre to Conrad, on which rate of 62c per cwt. was quoted him by the agent at point of origin. On arrival at destination, however, the bill was revised, making the charges 75c per cwt. Complaint was made to the Commission alleging an overcharge of 13c per cwt.

Investigation showed that the distance is 135.7 miles, and the first class rate for that mileage, 62c per cwt. Household goods in L. C. L. lots taking first class rating, claim was presented to the Great Northern Railway Company, and the overcharge of 13c per cwt. was promptly refunded.

In the Matter of the Application of the Butte, Anaconda & Pacific Railway Company to Make Adjustment of Certain Freight Charges.

The Butte Sewer Pipe & Tile Company of Butte, Montana, was receiving rock in carloads, from Mill Creek, a station located on the line of the B. A. & P. Ry., and had arranged with the said railway company for a rate of 75c per ton, which rate this Commission had approved. It developed, however, that one car had been shipped prior to the date on which the 75c rate became effective according to the published tariff, and on which a rate of 3c per cwt. Mill Creek to Anaconda, plus 50c per ton, Anaconda to Butte, had been assessed and paid.

The B. A. & P. Ry. Co. took up with the Commission for authority, to correct billing on this particular car to basis of 75c per ton, and make refund of the overcharge. The necessary authority was granted, with the understanding that no other shipment of rock had been made from Mill Creek to Butte to any other consignee, on which the higher rate had been assessed.

Subject: Alleged Overcharge.

Dominic Marino,

vs.

Northern Pacific Ry. Co., and
Southern Pacific Railroad Co.

Complaint was presented on November 23rd, 1910, alleging that a shipment of empty barrels from Red Lodge, Montana, to Santa Rosa, California, viz., N. P. Car 19121, had been overcharged in the sum of $29.30.

Investigation showed that this car had been billed at minimum weight of 14,000 pounds, rate 95c per cwt., amounting to $133.00 freight charges, which sum complainant had prepaid. Upon arrival at destination, however, the consignee was required to pay the sum of $29.30, which this complaint sought to recover.

The minimum of 14,000 pounds was correct for a car 36 feet in length, but the tariff provided for a graduated minimum, using a 36 foot car for a basis, and adding 3 per cent per foot additional, inside measurement. The car in which this shipment was transported was a 40 foot car, and would properly take 112 per cent of the 14,000 pound minimum, or 15,680 pounds. In addition to this, the rate of 95c per cwt. as billed, was not a through rate to Santa Rosa, but applied only to Suisun Junction, Santa Rosa being located on a branch line, the rate from Suisun Junction to Santa Rosa figuring 8½c per cwt., making through rate $1.03½ instead of 95c as billed. This difference in minimum, together with the additional local charge from the junction point to destination accounts for the alleged overcharge, and it was necessary to inform the complainant that an overcharge did not exist.

Subject: Overcharge on Ore.

Berry & Whitcomb,

vs.

Great Northern Railway Co.

On June 16th, 1910, these complainants made a shipment of 70 sacks of ore weighing 10,320 pounds, from Dodson, Montana, to Black Eagle Smelter at Great Falls, via the Great Northern Railway, on which charges were assessed at rate of 69c per cwt. This rate we were unable to confirm from the published tariffs, but in any event, applying the minimum of 40,000 pounds using the carload rate of $2.40 per ton for ore not exceeding $50.00 in valuation, the freight charges would figure $48.00, and on the ground that a less than carload shipment cannot be assessed in excess of the carload charges, claim was presented to the defendant railway company for $24.00.

This shipment was offered to the railway company as a less than carload consignment, and it so happened that it was loaded in a car of 60,000 pounds capacity. The railway company agreed that claimants were entitled to the minimum carload rate, but contended that inasmuch as it occupied a 60,000 pound capacity car, charges should be assessed on that basis. In this the Commission did not concur for the reason that the shippers could have ordered a 40,000 pound capacity car, and in that way obtained the benefit of the $48.00 rate. Accordingly refund of the overcharge was made on March 24th.

Subject: Classification Emigrant Movables.

F. P. Blair,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co., and
Great Northern Ry Co.

The above named complainant, a resident of Sidney, Montana, complained that on a shipment of household goods from Farlin, Iowa, to Mondak, Montana, over the lines of the above named carriers, he was required to pay the regular tariff rates on a quantity of rubber roofing which had been classified by the railroad company as contraband. Complainant felt that inasmuch as the classification permitted him to load a quantity of shingles in his car, and take the emigrant movable rate, the roofing, which was for the same purpose as shingles, should also be permissable.

The tariff under which this shipment moved specifically named the articles that would be included, and inasmuch as rubber roofing was not specified, the carriers were acting within their rights in assessing the regular tariff rates. Complainant was notified to this effect.

Subject: Alleged Overcharge.

Ives-Smith Coal Co.,

vs.

Northern Pacific Railway Co., and
Great Northern Ry. Co.

This complaint alleged overcharge on a car of coal shipped from Hoffman on the Yellowstone Park Railway, to Wickes, a station on the line of the Great Northern, on which the local rates through Helena were charged, viz., Hoffman to Helena, $1.25, Helena to Wickes, $1.30, making the through charge $2.55 per ton. There was in effect at the time this shipment moved, a rate of $2.10 per ton from Carbon county coal fields to Fuller, and Wickes being a station intermediate with Fuller, claimants took the position that the rate on the shipment at issue should not exceed $2.10 plus 25c Hoffman to Chestnut, or $2.35 per ton, and asked for refund of 20c.

This car was originally consigned to Geo. B. Holmes, Helena, who accepted delivery and paid the freight charges thereon. The following day it was turned over to Ives & Smith, the complainants in this case, the latter re-billing it to their customer at Wickes.

The investigation developed the above facts, and notwithstanding the rate of $2.10 from Carbon county points, it was not found that this shipment had been overcharged, for the reason that delivery had been accepted at Helena, and the further movement of the car thence to Wickes was a separate and distinct transaction with another carrier. Neither could the shipment be characterized as "reconsigned," for reasons stated herein, and the sum of locals was the only combination of rates that could properly be applied.

Subject: Overcharge.

Fred D. Whisler,

vs.

Chicago, Milwaukee & Puget Sound Railway Company.

The above named complainant shipped a car of slabwood from Cobden to Missoula, Montana, and paid freight charges thereon, $1.15 per cord. Believing that the rate charged was excessive, and that the proper rate should be 95c per cord, the matter was referred to the Commission, and complainant was advised that apparently an error had been made, as the authorized and published rate on slab wood between these points at the time this shipment moved, was 95c. Claim was presented, and it was found that the billing agent had used the wrong rate. Refund of the difference was accordingly made.

Subject: Refund on Household Goods.

William F. Redfield,

vs.

Great Northern Railway Co.

The above named complainant shipped a car of household goods from Manhattan, Montana, to Glasgow, Montana, on October 5th, 1910, via the Northern Pacific Railway, Manhattan to Helena, thence to destination via the Great Northern Railway. From Helena to Glasgow, there was no rate other than Class "D" of 62c per cwt., minimum 20,000 pounds. Complainant alleged that the rate was unreasonable; investigation showed that the rate from Twin Cities to Glasgow was 27c per cwt. on a commodity basis, and the Commission took the view that notwithstanding the movement from Helena to Glasgow was east-bound, the rate should not exceed that from St. Paul or Minneapolis.

The railway company was agreeable to making amendment to tariff, naming a commodity rate of 27c from Helena to Glasgow, which would, of course, apply as a maximum at intermediate points. Amendment was made retroactive to October 5th, 1910, the date on which the shipment in question was billed, and refund of 35c per cwt., based on 20,000 pounds, amounting to $70.00 was made March 4th, 1911.

Subject: Switching Rates on Coal at Butte.

South Butte Coal Company,

vs.

Northern Pacific Railway Company.

This complaint which is dated January 9th, 1911, relates that "until recently" it has been the practice of the Northern Pacific Railway Company to make a charge of $3.00 per car flat rate, on coal from the C. M. & P. S. connection at Butte to points in the Northern Pacific upper and lower yards, and they were now obliged to pay on a ton mile basis, materially advancing the cost per car .

It was found on investigation, that the only tariff in effect applying on this business provided for a rate per ton per mile, notwithstanding that the N. P. had been making a straight carload rate of $3.00, which they explained was due to a misunderstanding on the part of their local office.

This business consists of coal from Roundup, located on the C. M. & P. S. Ry., and upon taking the question up with that company, in order to equalize the basis heretofore applied, it was arranged that the C. M. & P. S. would absorb the N. P. switching charge in excess of $3.00 per car. This was entirely satisfactory to complainants, and permitted the continuance of Roundup coal in that market. It will be observed that under this ruling the coal company pays the same switching charge per car as they did before the Northern Pacific discovered its error.

Subject: Excess Baggage.

Miss O. M. Lange,

vs.

Chicago, Burlington & Quincy Railroad Company, et al.

In August, 1909, the above named complainant in company with her sister, purchased two tickets from Bloomington, Ill., to Hood River, Oregon, via the Big Four, C. B. & Q., D. & R. G., O. S. L., and the O. R. & N. They had but one trunk between them, and upon arrival at Lincoln, a C. O. D. excess baggage slip was attached for $6.40, to cover the excess through to destination.

The trunk went astray, and was forwarded from Hood River, Oregon, to Belt, Montana, about a month later, at the request of complainant, who paid the excess of $6.40 and made claim therefor. The claim was declined, giving as the reason that same must be accompanied by the original stubs of the tickets purchased at Bloomington. It was not possible to produce these; they had not been preserved, and on January 11th, 1911, the matter was referred to the Commission.

We explained the situation to Mr. P. S. Eustis, Passenger Traffic Manager of the C. B. & Q. on January 17th, and complainant advises on February 11th, that she has received draft for the full amount of claim, from the C. B. & Q. General Baggage Agent. We are also in receipt of a letter from the Burlington Company, advising that they have remitted the full amount to complainant, and will look to their western connections for their pro rata.

Subject: Overcharge.

P. E. Laing,

vs.

Chicago, Milwauke & Puget Sound Railway Company,

Complainant shipped a car of household goods and stock from Peever, S. D. to Valier, Montana, May 10th, 1910, and prepaid $74.00, the agent at Peever having quoted him a rate of 37c per cwt. to Conrad, the junction of the Great Northern and the Montana Western Railway, on which Valier is located.

Shipment arrived at Harlowton on the 14th, and was held there until Monday the 16th. From Harlowton, the car was moved to Judith Gap where it remained until Saturday, the 21st, Just why the car was taken to Judith Gap has not been made clear, as there was no track connection at that time between the C. M. & P. S., and the Great Northern at that point. It was therefore necessary to move car to Butte, where it was turned over to the Great Northern. Upon arrival at destination, complainant was required to pay $185.26 additional, making the total charges $259.26.

Investigation showed that this car could have been handled at a lower rate via Aberdeen, there delivered to the Great Northern for movement to Conrad, on a through rate of 51.8c per cwt.

The Commission presented claim to the C. M. & P. S. Ry. Co. on basis of the lower rate via Aberdeen, taking the position that the shipper was entitled to the lowest rate that could be applied between point of origin and destination, and refund of overcharge in the sum of $89.85 was made January 20th, 1911.

Complainant also included loss of time, additional expense he had been put to, and deterioration on his stock caused by the excessive length of time on the road. The Commission could not, however, consider that portion of his claim for damages, which must be determined by the courts in the event that the carrier company is not willing to make an adjustment.

Subject: Overcharge.

S. A. Winscott,

vs.

Northern Express Co., et al.

Complainant shipped a box by express on June 25th, 1910, from Springdale, Montana, to Winslow, Arizona, and prepaid charges $3.75. Again on July 8th, he shipped another box to same destination and prepaid $2.60. One of these packages arrived at destination without way-bill, and consignee was required to pay $5.50, making in all $11.85 charges paid.

Investigation showed that the agent at Springdale has made an error in figuring the correct charges, which should have been $4.85, and $3.75 respectively, total $8.60, hence complainant was entitled to a refund of $3.25, which was paid Dec. 24th.

Subject: Alleged Overcharge.

J. A. Branting,

vs.

Northern Pacific Railway Co., and Chicago, Burlington & Quincy Railroad Company.

Complainant made a shipment of clothing from Bonner, Montana, on December 14th, 1910, consigned to himself at Stromsberg, Nebraska, the agent at Bonner having quoted him a rate of $2.36 per cwt. through to destination.

Upon arrival at Billings, the shipment was held for prepayment of charges, inasmuch as the rules of the Burlington Company require that this be done on shipments of this commodity, and further demanding that the through rate from Bonner to Stromsberg, was $3.54 per cwt. The investigation developed that the pacakeg contained "personal effects," and had not been released by the consignor to valuation not exceeding $10.00 per cwt., hence the higher rate which was in accordance with the published tariffs. Had the shipment been released as above, the rate of $2.36 as quoted by the agent at Bonner would have applied. There was, therefore, no overcharge.

PART III.

TRAIN ACCIDENTS AND PERSONAL INJURIES.

During the year, the Commission has been notified of, and has investigated either on the ground at the scene of the accident, when practicable to do so, or from the testimony of witnesses, depending upon the nature of the casualty, the following train accidents involving loss of life or personal injury to the extent that the services of a physician were required, in accordance with Section 16-A, Chapter 37, Laws of 1907:

OCTOBER 1st, 1910, TO SEPTEMBER 30th, 1911.

Road.	Employes		Other Than Employes	
	Killed.	Injured.	Killed.	Injured.
Northern Pacific Ry.	13	151	22	84
Great Northern Ry.	5	169	15	52
Chicago, Milwaukee & Puget Sound Ry.	7	34	5	8
Butte, Anaconda & Pacific Ry.	..	9	..	3
Oregon Short Line R. R.	..	1	2	3
Chicago, Burlington & Quincy R. R.	1	10	1	2
Gilmore & Pittsburgh R. R.	..	1	..	..
Montana, Wyoming & Southern R. R.	..	1	..	..
Montana Western Ry.	..	..	..	..
White Sulphur Springs & Yellowstone Park Ry.	..	..	..	..
Total	26	376	45	152

A brief review of the more important accidents follows.

Great Northern Railway—Kalispell Division.

East-bound passenger train No. 44 collided with the rear end of Extra 1912 East, a few car lengths west of the west switch at Bombay, Montana, 4:53 A. M., November 5th, 1910, killing an unknown man who was supposed to have been a trespasser, and causing injury to four employes.

Train No. 44 had orders to wait at Blackfoot until 4:41 A. M., Bombay 4:50 A. M. Blackfoot is the first station west of Bombay, and it will be noted from the fact that the collision occurred at 4:53 that the freight train was occupying the main line on the time of a superior train. When Extra 1912 east approached Bombay, the engineer says he got a signal from some one to "come ahead," and thinking that he would probably get more time on No. 44, pulled up the main line to the depot.

There is a curve just west of the point of accident which obstructed the view of the engineer on train No. 44, and the danger signals which were thrown from the caboose of the extra, were not sufficient to warn the approaching train in time for it to stop. The rear brakeman on the extra put out two torpedoes while running at a slow rate of speed these

were both placed on the same rail several feet apart, constituting a caution signal, also threw off a fusee which was found burning a short distance from the caboose.

The investigation shows train No. 44 was not properly flagged, and the rear brakeman whose duty this was, was relieved from the service of the railway company.

In accordance with the transportation rules, the extra east had no right to occupy the main line on the time of a superior train without being fully protected, and this is another case where an employe failed to do his duty and observe the rules of the company. However, the accident would not have happened if block system had been in operation, as No. 44 could not have entered the block at Blackfoot until the Extra east had cleared at Bombay, regardless of the fact that No. 44 is a first class and a superior train. The only thing that could have happened would have been to delay No. 44 for a few minutes.

This accident again brings to our attention the necessity for additional safety in the movement of trains. The ominous practice of operating under train rights has resulted in a great many wrecks which this Commission feels will not be minimized until trains are operated in a positive block.

Great Northern Railway—Kalispell Division.

East-bound passenger train No. 44, collided with Extra 1205 west, at the east switch at Lubec, about 4:45 A. M., January 22nd, 1911, injuring four train and enginemen, none fatally, although the fireman on Extra 1205 was badly burned. None of the passengers on train No. 44 were injured. Two train porters were slightly bruised.

Number 44 was double headed and had a positive meet with Extra 1205 west, which had a rotary snow plow outfit, at Lubec. When No. 44 whistled for Lubec, the conductor pulled the air signal as is customary approaching meeting points. The engineers answered the conductor's signal. A bad storm was on at the time, and the train passed the depot without the engineer noticing where he was, and did not see the rotary until too close to stop. No. 44 was running between 15 and 20 miles per hour when they hit. The snow plow extra was standing on the main line while the brakeman was sweeping the snow out of the switch. There was no flagman out, and ordinarily this precaution would not be necessary in view of the positive meeting order at that station. The accident was the result of the engineer on train No. 44 losing his bearings. Lubec is a blind siding.

Great Northern Railway—Kalispell Division.

East-bound passenger train No. 44 was derailed at the west switch at Coram, Mont., 12:30 A. M., Sept. 7th, 1910; three persons killed and thirty-one injured.

Extra 1843 East was the last train to use this switch in taking siding at about 8:30 P. M. Number 44 was running about thirty miles per hour when the accident happened. The switch light showed green, and there were no indications of danger. The engine, refrigerator, baggage car and front truck of the smoking car passed over the switch all right, and the rear truck of the smoker was the first to leave the track.

Investigation showed that W. J. Neilson, the rear brokeman on extra 1843 east, did not close and lock the switch, which he should have done, but left it to a bystander, one Robert Loftin, whom he supposed was an employe. Loftin, however, was a soldier who happened to be near the switch at the time and called out, "I'll close it, Bill." The switch was thrown after this extra pulled in on the passing track, but the lever was not secured in the notch, nor was the lock put on. There was nothing to hold it in its proper position, although it was set for the main line, and after 44's engine and the first two cars passed over it in safety, the vibration naturally caused the controlling point to work away from the stock rail, permitting the flange of the wheel to pass behind the point, thus "straddling" the switch and putting the train on two tracks. Hence the derailment.

Neilson and Loftin were both charged with manslaughter, of which they were found "not guilty."

Great Northern Railway—Montana Division.

Train No. 401, west-bound time freight, collided head-on with Extra 1614 east, 6:30 P. M., Oct. 23rd, 1910, one and one-fourth miles east of Harlem station, killing fireman Noonan on the extra, and more or less seriously injuring four other train and enginemen. Estimated damage to property, $6,510.00.

The original meeting point between these two trains was at Montauk. The dispatcher, however, put out an order at Chinook, to the extra changing the meeting point to Madras, 11.7 miles west of Montauk, but the operator at Chinook, failed to deliver this later order, and the conductor also failed to note that he did not have an order, the number of which was shown on his clearance.

Gross carelessness in so important a matter as the handling of train orders, is to be regretted, but this collision would not have occurred had block system been in use, as it would not be possible for both trains to have the right to the block at the same time.

Chicago, Milwaukee & Puget Sound Ry.—Rocky Mountain Division.

C. M. & P. S. Engine 2068, at 10:05 P. M., August 18th, one and one-half miles west of Grace, Montana, dropped her crown sheet resulting in explosion of the boiler, scalding Engineer Thomas, and inflicting injuries on fireman H. W. Rawls, from which he died August 22nd.

At the time of the accident, this engine was ascending a two per cent grade, pulling five cars and caboose. Investigation showed that the crown sheet was torn from the flue sheet for a distance of 5½ feet. Six feet of the crown sheet was blue, indicating that it had been burned on account of low water. The radial stay-bolts had been pulled through the crown sheet, and the threads on the crown sheet end of the stays were in many cases stripped. No broken stays were found. The gauge and water glass cocks were examined and found to be in good condition. Engineer Thomas stated that one of his injectors was working when the accident occurred, and that he had to cut it down several times coming up the hill to keep it from flooding.

This engine had been through the shops and given a general overhauling July 27th, 1911, less than one month before the explosion took place. The engineer was unable to assign any reason for the accident, and claims to have had about a half glass of water, and that a new water glass was put in just before leaving Three Forks on this trip, and that the new glass registered correctly. The lowest reading of the water glass on this type of engine is 6¼ inches above the highest point of the crown sheet. This would give about 3¼ inches of water over the crown sheet on a two per cent grade. A careful examination of this engine after the explosion occurred, shows that the crown sheet had been red hot caused by low water, notwitstanding the engineer's statement that his gauge glass showed plenty of water in the boiler.

Northern Pacific Railway—Yellowstone Division.

Northern Pacific Engine No. 2423, one-quarter mile west of Newton, Montana, exploded at 5:15 P. M., November 1st, 1910, killing the fireman and seriously injuring the engineer, as well as two hoboes who were stealing a ride.

The investigation shows that this explosion was caused by low water in the boiler. Half of the crown sheet and the left side sheet were torn out of fire box; the crown sheet was cut off at the combustion chamber seams, starting on the right side and following down to the mud ring. The sheet was blue, indicating that it had been burned, and all the radial stays had been pulled out showing that the crown sheet had been heated to the extent that the heads of the bolts pulled through as though the sheet had been made of some soft material.

Northern Pacific Railway—Montana Division.

At Laurel, Montana, 1:05 P. M., December 22nd, 1910, Engine No. 1287 used in switching service, was backing up on what is known as the main lead in Laurel yards, and at a point about 1500 feet east of the depat, the tender jumped the track, killing D. D. Anthes, general yardmaster, S. R. Corrigan and M. O'Dea, switchmen. All three were at the time of the accident riding on the footboard at the rear end of the tender, and were thrown under the wheels.

Investigation shows that after leaving the rails, the engine and tender moved 190 feet, indicating excessive speed in view of the condition of this track, which was rough and out of surface. O'Dea was killed instantly, Anthes and Corrigan died soon after as the result of their injuries.

SAFETY IN THE OPERATION OF TRAINS.

In its annual reports to the Governor, the Commission has, in accordance with Section 4396, Revised Codes, made recommendations from time to time, with a view to prmoting greater safety to the employes of railroads and to the traveling public. Said section requires that "Said Board shall make and submit to the Governor annual reports containing a full and complete account of the transactions of their office, together with such facts, suggestions and recommendations as may be by them deemed necessary. * * *"

Investigations made by the Commission since its creation, of railroad accidents, have clearly shown that the cause of many such casualties has been attributable to an inferior overlooking a superior train; failure on the part of employes to properly protect their trains according to flagging rules, and failure on the part of enginemen to exercise due caution after danger signals had been displayed. Obscure weather conditions causing train and enginemen to lose their location resulting in collision; all of which would be reduced to a minimum if trains were operated in a positive block; that is, but one train permitted in the same block at the same time. The Commission is aware that this suggested method of handling traffic would in some measure retard its movement, but we do not anticipate opposition to the statement that it is better to move a little slower, doing so with safety, than to sacrifice the lives of employes and the public, in addition to many thousands of dollars worth of property annually.

There is no law in this state requiring railroad companies to block their trains, nor has the Railroad Commission the authority to make rules and regulations so governing. Our annual reports contain a summary showing the number of persons killed and injured on railroads and as stated above recommendations have been made for protective legislation. Governor Norris in his message to the Twelfth Legislative Assembly, says:

> "Conservation of Human Life: Examination of the reports of the State Railroad Commission and the Mine Inspection Departments reveals the fact that death exacted a heavy toll on the railroads and in the mines of the State during the past twelve months. One hundred and eighteen persons were killed in railroad accidents, while six hundred and sixty-six

persons were injured, and no account is taken of personal injury in which the services of a physician were not required.

This distressing showing is sufficient to inspire the conviction that we are yet far from the coveted goal of giving to employes in hazardous occupations and to the traveling public, the maximum of protection. Contrasting the showing made in this state, and I may say in the entire Union, with the record of older countries, one is impelled to the belief that the ideal system of providing protection for employes and travelers is yet to be adopted. We may not, unfortunately, hope to achieve the result of making accidents impossible, and yet the experience of other nations should encourage us in the work of enacting laws that will reduce the danger of life and limb to the minimum. The subject is worthy of your profoundest thought, and if by any method you may make it impossible for Montana statistics to show another such total in the future, then you will have accomplished that for which the employes in hazardous undertakings, the great traveling public and the whole people as well, will give you life-long gratitude."

The Governor's message referred, without a doubt, to the Commission's advocation of Block System, but notwithstanding that measures designing safety were introduced, there was no such legislation enacted by the Twelfth Assembly.

PART IV.

NAVIGATION.

NAVIGATION.

Enacted by the Twelfth Legislative Assembly.

CHAPTER 105.

Session Laws, 1911.

"An Act to provide for the Inspection of Steam Boats, and all other Boats propelled by Machinery, Sailing craft, Ferry Boats and Boats carrying passengers or freight for hire on any of the navigable waters of the State of Montana, to provide for their inspection and for the appointment of an inspector of Boats, to define his duties, to provide for his compensation and to provide sailing rules for all such Boats, and for the general superintendence and control of navigation by the State Board of Railroad Commissioners, and providing a penalty for the violation of any of the provisions of this Act."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The Railroad Commission of the State of Montana shall appoint some suitable person, Inspector of Steam Vessels, other Boats propelled by machinery, Sailing Craft and all Ferry Boats on any of the navigable waters of the State of Montana. Said Inspector shall have a practical knowledge of such boats and vessels and ferry boats as ply in navigable waters of the State of Montana, and who is experienced in the construction and familiar with the safety appliances of all such boats and their appurtenances.

Section 2. Said Inspector shall annually or as often as the Board of Railroad Commissioners may order, inspect every steam boat or other boat propelled by machinery or sailing boat or ferry boat carrying passengers or freight for hire or towing for hire, and shall examine carefully the hull of said boats and their equipment, and require such changes, repairs and improvements to be adopted and used as he may deem expedient for the safety of all such boats. He shall also fix the number of passengers that may be transported upon any boat; he shall likewise fix the number of tons of freight that may be carried upon any such boat, barge or ferry boat. He shall, whenever he deems it expedient to do so, visit any of such boats and examine into her condition or their condition for the purpose

of ascertaining whether such boat or boats has a certificate from the Railroad Commission and whether such boats are comformable to and obeying the conditions imposed by this Act and by the Railroad Commissioners. The owner, master, pilot and captain or engineer of such vessel or boat shall answer all reasonable questions and give all information in his or her possession in regard to said boat or boats, or any of them, concerning their machinery and the manner of managing said boat. The said Inspector shall examine all life saving appliance and life boats carried on any of such vessels, steam boats or other boats propelled by machinery as well as all ferry boats. The said Inspector shall examine the captains and pilots of all such boats and vessels to determine under this Act their proficiency in the handling of such boats. The said Inspector shall report the conditions of all such boats, life saving appliances and life boats to the State Railroad Commission.

Section 3. Said Inspector shall at all times have free access to any and all of such boats and parts thereof, and shall have free transportation thereon for the purpose of making such inspection.

Section 4. Said Inspector shall report all of his findings to the Railroad Commissioners of the State of Montana, which said Commission shall thereupon, if in its opinion said boats shall be sea-worthy and safe for the carrying of passengers and freight, issue to such boat a license or permit to engage in the business of navigation on any of the navigable waters of the State of Montana and shall likewise issue licenses to any captain or pilot of said boat, if in its judgment said captain or pilot is qualified for the duties imposed upon him by the provisions of this Act; and said commission shall issue all rules and regulations, that may be in its judgment, necessary for the safe navigation of all steam boats and all boats propelled by machinery, sailing boats and ferry boats navigating on any of the navigable waters of this State and carrying passengers or freight for hire.

Section 5. No greater number of passengers shall be transported upon any licensed boat, steam boat or other boat propelled by machinery or sailing boat or ferry boat than the number allowed in the certificate of such boat, vessel, steam boat, or other boat propelled by machinery or sailing boat or ferry boat and any captain, pilot, engineer of such boat who

shall violate any of the provisions of this section shall be guilty of a misdemeanor and will be punished accordingly.

Section 6. All steam-boats to which this Act shall apply shall be so constructed that all wood-work about the boiler, smoke-stack, fire boxes, chimneys, cook-houses, stoves and stove pipes exposed to ignition shall be so shielded by some incombustible material that the air shall circulate freely between such materials and woodwork or other ignitible substance, and before granting the certificate of inspection the Railroad Commission shall require that all necessary provisions be made as it may deem expedient to guard against loss or damage by fire.

Section 7. The following rules shall be observed in navigating steam vessels, steam boats, and all other boats propelled by machinery, and sailing craft, on any of the navigable waters of the State of Montana affected by the provisions of this Act:

Rule 1. All steam boats or other boats propelled by machinery shall be equipped with either steam or compressed air whistles.

Rule 2. When two boats are meeting, end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

Rule 3. When two boats are crossing so as to involve risk of collision, the boat which has the other on her starboard shall keep out of the way of the other.

Rule 4. When a steam-boat or boat propelled by machinery and sailing boat are proceeding in the same direction so as to involve risk of collision, the boat propelled by machinery shall keep out of the way of the sailing craft.

Rule 5. When by any of these rules one of the two of the vessels is to keep out of the way, the other shall keep her course and speed.

Rule 6. Every boat propelled by machinery under way and approaching another boat or vessel of any kind so as to involve a risk of collision, shall slacken her speed, or if necessary, shall stop and reverse her engine, and every boat propelled by machinery, shall, when in a fog go at a moderate speed.

Rule 7. Any boat propelled by machinery overtaking another boat propelled by machinery shall keep out of the way of the last named boat.

Rule 8. When two boats propelled by machinery are going in the same direction and the stern boat wishes to pass the other, she shall signal the forward boat of her intention to pass on the port side by two distinct whistles, and to pass on her starboard side by one distinct whistle, which shall be answered by the forward boat by the same number of whistles, and the forward boat shall keep on her course as if no signal had been given.

Rule 9. When two steam-boats or other boats propelled by machinery are approaching each other, and if the course of such boats is so far on the starboard side of each other as not to be considered by the pilot as meeting end on or nearly so, or if such boats are approaching each other in such a manner that passing is not as in Rule 2, being deemed unsafe, the pilot of one boat shall give two short and distinct blasts of his whistle, which the pilot of the other boat shall answer by two blasts of his whistle, and they shall pass to the left (on the Starboard) side of each other.

Rule 10. Steam-boats or other boats propelled by machinery approaching each other at not less than 300 yards distance from each other shall give a signal with one loud distinct whistle.

Rule 11. When two steam-boats or other boats propelled by machinery are approaching each other and the pilot of either boat fails to understand the course or intention of the other, whether from signals being given or answered erroneously or from other causes, the pilot so in doubt shall immediately signify the same by giving several short blasts of his whistle and if the boats shall have approached within 500 yards of each other, both shall immediately slow up to a speed barely sufficient for steerage or until the proper signals are given, answered and understood or until the boats have passed each other.

Rule 12. When a steam-boat or other boat propelled by machinery is in a fog or is in thick weather, it shall be the duty of the pilot to cause a long blast of the whistle to be sounded at intervals of not to exceed one minute.

Rule 13. Signals of distress shall be four blasts of the whistle and shall be recognized by the master, of any steam-boat or other boat propelled by machinery hearing the same and he shall render such assistance as is in his power.

Rule 14. Any steam-boat or other boat propelled by ma-

chinery landing at a wharf or dock shall have the right to such wharf or dock for a period of five minutes. If detained at the wharf or dock for a longer period than five minutes the steam-boat or other boat propelled by machinery already at the wharf shall allow another steam-boat or other boat propelled by machinery to land along side and discharge her passengers and freight over her deck for at least ten minutes and thereafter until the first steam-boat or other boat propelled by machinery shall leave said wharf or dock.

Rule 15. In the construing of these provisions due regard must be had for all of the dangers of navigation and to any special circumstance which may render a departure therefrom necessary in order to avoid immediate danger.

Rule 16. Every steam-boat or other boat propelled by machinery which is under sail and not under steam is to be considered a sailing vessel and any or every vessel under steam or propelled by machinery whether under sail or not, is to be considered a steam vessel.

Rule 17. All steam-boats and other boats propelled by machinery licensed under the provisions of this Act or article shall conform to and obey such other Rules and Regulations not inconsistent herewith as the Board of Railroad Commissioners may direct.

Rule 18. Every steam-boat or other boat propelled by machinery on the navigable waters within the jurisdiction of this state shall have two copies of this section framed. One to be posted in the pilot house and the other to be hung in a conspicuous place on the vessel for the inspection of passengers.

Section 9. The master, owner, pilot or other person in charge of a steam-boat, or other boat propelled by machinery or sailing craft when navigating any of the waters of this State, shall between sunset and sunrise cause said boats to carry the following lights: First: at the foremast head, a bright white light of such a character as to be visible on a dark night, in a clear atmosphere at a distance of at least two miles and so constructed as to show a uniform and unbroken light over an arc of the horizon to twenty points of the compass and be so fixed as to show the light ten points on each side of the vessel, namely: from right ahead to two points abaft the beam on either side; Second: On the starboard side a green light of such a character as to be visible on a dark night with a clear

atmosphere, at a distance of at least two miles and be so constructed as to show a uniform and unbroken light over an arc of the horizon to ten points of the compass and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. Third: On the port side a red light of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles and so constructed as to show a uniform and unbroken light over an arc of the horizon to ten points of the compass and so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The red and green lights shall be fixed with screens so as to prevent them from being seen from the rear.

Section 10. Every steam boat or other boat propelled by machinery carrying passengers or freight for hire shall be provided with a force pump or an equivalent apparatus for throwing water and the same shall be at all times during the navigation of such boat kept ready for use. Such pump shall be of suitable size and construction to use either in extinguishing fires or pumping water out of the boat and shall be approved by the Board of Railroad Commissioners.

Section 11. Every steam-boat or other boat propelled by machinery and sailing craft or ferry boat affected by the provisions of this Act shall carry on her deck, hung from davitts or towed astern such life boats or other boats as shall be ordered by the Board of Railroad Commissioners, and every Captain shall order and hold a practice drill for lowering of life boats at least once every week.

Section 12. Every steam-boat or other boat propelled by machinery used in the transportation of passengers and freight for hire shall have a life preserver for each passenger and she shall also carry one for each of her crew. Such life preservers shall be made of good sound cork blocks, easily adjusted to the body with bolts and straps properly attached and so constructed as to pass the cork under the shoulders and around the body of the person wearing the same. Each life preserver shall contain at least six pounds of good cork having a buoyancy of at least four pounds to each pound of cork. It shall be the duty of the inspector and of the Railroad Commission to satisfactorily ascertain that every life preserver is as herein required. All such life preservers shall be kept in a convenient place, accessible in case of accident, in readiness for immediate

use and the places where same are kept shall be designated in the Railroad Commission certificate and pointed out by printed notices posted in such places as the Railroad Commission may direct.

Section 13. The State Boiler Inspector shall inspect all steam boilers in each of the steam-boats within the state.

Section 14. Every steam-boat or other boat propelled by machinery or sailing craft subject to the provisions of this Act, shall have her name printed on her stern in either black, yellow or red letters of not less than three inches in length.

Section 15. If any boat subject to the provisions of this Act shall be deprived of the services of any licensed officer without the consent fault or collusion of the master, owner or person interested in such boats, the Board of Railroad Commissioners shall be notified and the deficiency may be temporarily supplied until the services of a licensed officer can be obtained.

Section 16. The owner of every steam-boat or other boat propelled by machinery, sailing or ferry boat subject to the provisions of this Act shall pay the inspector for the inspection of such boats as follows, to-wit: For each boat under ten tons burden, Ten Dollars; for each boat over ten tons burden and under twenty tons burden, Fifteen Dollars; for each boat over twenty tons and under fifty tons burden, Twenty Dollars, for over fifty tons and under one hundred tons burden, Twenty-five Dollars, and all over a hundred tons burden, Thirty Dollars. For each ferry boat, Ten Dollars, and for each barge Ten Dollars.

Section 17. For every license granted under the provisions of this Act there shall be charged and collected from the person or boat receiving such license or certificate the sum of five dollars, which said license shall remain in full force for one year from the date thereof.

Section 18. The Inspector shall receive for all services performed by him under the supervision of the Railroad Commission, in full for such services as Inspector the fees required to be paid for the license and certificate issued and for the inspection of such boats, and no other or further fees. The fees for inspection shall be paid at the time of the inspection. All fees for licenses shall accompany the application for such license and in case such license is not issued, the fees shall be returned to the applicant.

Section 19. It is hereby made the duty of the Board of Railroad Commissioners to enforce the provisions of this Act and said Railroad Commisioners shall have the jurisdiction to make all needful rules providing for the safety of all passengers and freight traveling upon the navigable waters of this State, provided that such rules are within the provisions of this Act.

Section 20. It shall be unlawful for any person or persons to operate any steam-boat or other boat propelled by machinery, sailing craft or ferry boat, or engage in the business of the navigation of boats without first complying with the provisions of this Act.

Section 21. Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof be fined in any sum not exceeding Three Hundred ($300.00) Dollars, or imprisoned in the County Jail not exceeding six (6) months.

Section 22. All Acts and parts of Acts in conflict herewith are hereby repealed.

Section 23. This Act shall be in full force and effect from and after its passage and approval.

Approved March 6, 1911.

CHAPTER 147.

"An Act prohibiting any person, co-partnership or corporation from obstructing the waters of any navigable lake within the State of Montana, to such an extent that the public cannot have free access to the same, and regulating the handling and disposition of logs floated in and upon such navigable lake, and providing punishments for the violation of this Act."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Any person or corporation who shall run or float saw logs or other timber upon the surface of any navigable lake within the State of Montana, shall not allow such saw logs or other timber to accumulate along the shore, or in any bay, of such navigable lake, in such a way as to obstruct or interfere with free access to any lands lying between high water mark and low water mark of such lake, and between high water mark and the open waters of such lake so as to leave at all times 150 feet open water along the shore of such lake, except as provided in Section 2 of this Act.

Section 2. Any person or corporation using the waters of any navigable lake for floating logs or timber, shall so dispose of such logs and timber along the shore, or in any bay, of any such navigable lake within the State of Montana, that a free passageway from high water mark to the unobstructed surface of such lake shall at all times be left open, and such passageway shall not be less than one hundred and fifty feet in width of open water along the shore of such lake, provided that said logs may be held at a distance of less than one hundred and fifty feet from the shore where the land abutting the water is owned by the same party owning the logs, but if such logs occupy the water for a distance of six hundred feet or more along the shore of such lake, then and in that event an open channel not less than one hundred feet in width shall be maintained through said logs from the shore, to the open waters of the lake, and one such open channel shall be maintained for each six hundred feet of the shore line that is so obstructed.

Section 3. Any person or corporation who shall violate any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding five hundred dollars ($500.00) or imprisonment in the county jail not exceeding a period of thirty days, or by both such fine and imprisonment.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

Section 5. This act shall be in full force and effect from and after its passage and approval.

Approved March 17, 1911.

CHAPTER 124.

"An Act regulating the leasing of lands, which are, or may be, owned by the State of Montana, lying between low and high water mark of any navigable lake within the State of Montana, and forbidding the sale or leasing thereof."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. None of the lands lying between low-water mark and high water mark of any navigable lake within the State of Montana, shall ever be sold or leased by the State of Montana, or the State Board of Land Commissioners, or any officer

or board of said State; provided, however, that where the State owns land bordering on any navigable lake, the ownership of the state and its power to sell or lease such land shall be the same as that exercised by individual owners of like land.

Section 2. All Acts and parts of Acts in conflict herewith are hereby repealed.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 7, 1911.

Pursuant to the provisions of Section 1, Chapter 105, which requires that the "Railroad Commission shall appoint some suitable person, inspector of steam vessels, other boats propelled by machinery, sailing crafts, and all ferry boats, on any of the navigable waters of the State of Montana; said inspector shall have a practical knowledge of such boats and vessels and ferry boats as ply the navigable waters of the State of Montana, and who is experienced in the construction and familiar with the safety appliances of such boats and other appurtinances," Captain N. A. Palmer was, by the Board of Railroad Commissioners, duly and regularly appointed inspector, on April 19th, 1911, such appointment being confirmed at a regular meeting of the full Board, on April 25th.

Captain Palmer has had a great many years experience on ocean as well as lake craft, and is unquestionably well qualified to perform the duties of this office. The Commission feels that it is fortunate in securing the services of a man of wide and varied experience in that particular line of work, Mr. Palmer being highly recommended by his former employers. His experience of late years has been largely on the waters of Puget Sound.

Immediately following his appointment, Captain Palmer, together with the Board of Railroad Commissioners, drafted such forms of reports, certificates, licenses, etc., as the law in question requires, and it will be the duty of said inspector to report all of his findings to this Commission, based on which, certificates to seaworthy boats or licenses to qualified captains or pilots, will be issued from this Department, or declined if, in the opinion of the inspector, any craft engaged in the transportation of passengers or property for hire, is not safe.

Other rules and regulations not specifically provided for in said law, will be issued from time to time as the conditions and peculiarities of the waters of the state, seem to demand. Chapter 105 herein referred to, empowers the Railroad Commission to make such rules and regulations as in its opinion, are necessary for the safety of the public, and while there has not been to our knowledge, any accident of importance on any of the navigable waters of the state, in recent years, there have been hazards of accidents which might have entailed serious results, and which it is the intention of this Board to guard against by regulating the number of passengers, and the number of tons of freight, live stock, etc., that each and every boat engaged in such service, shall be permitted to transport, and also the manner of loading such boats so that the ominous practice of the load being placed in such a way as to render the vessel top heavy, thereby increasing the liability of its overturning, will be eliminated.

The matter of equipping all boats with a sufficient number of life preservers, life boats or life rafts, will be given the closest attention.

The greatest number of boats engaged in navigation for hire, operate on the waters of Flathead Lake, although there are several launches and ferry boats in commercial navigation on the smaller bodies of water in various sections of the state, and it may be stated that practically none of these boats carrying passengers or freight for hire, was equipped with life saving appliances such as the law requires. It has been, therefore, necessary to grant sufficient time in which to obtain the equipment from the manufacturers, and certificates have not been issued from this Department until the requirements have been complied with. There are still a few boats, which are now tied up for the season, not properly equipped, and to which license has not been granted. The owners, however, are now fully informed of the navigation laws of the state, and will take necessary steps to pass inspection before the opening of next season.

As stated above, it has been necessary to acquaint the owners of boats and the captains thereof, with the provisions of the new statute, and allow a reasonable length of time in which

to comply therewith, as many boat owners, captains and pilots were totally unaware of its enactment, until brought to their attention by our inspector. This, having been done during the season just closed, it will not be necessary to further explain matters, and with the opening of navigation season of 1912, no excuse will be acceptable for non-compliance with all the requirements of the law, and all such will be dealt with according to its penalty clause.

During the season of 1911, the following certificates to boats and licenses to captains or pilots have been issued:

CERTIFICATES.

Name of Boat.	Owned by	Authorized to carry Passengers.	Freight (tons.)
Montana	Flathead Lake Trans. Co.	160	40
Klondike	Hodge Navigation Co.	425	110
Doman	Taylor Bros.	13	2½
Eva B	Eva B. Boat Co.	30	7½
Eva B (barge)	Eva B. Boat Co.	..	8
Black Mariar	Geo. Fessenden	..	90
Albatross	Geo. Fessenden	..	90
Star No. 1	Star Towing Co.	..	50
Cassie D	O. Denney	25	..
Big Fork	Anderson & Caldwell	100	36
Swan	E. D. Moffatt	26	7
Flyer	Fessenden & Burt	50	13
Emiline	Frank Kelly	25	4
Swan	A. K. Millett	13	1
Kalispell	Flathead Lake Trans. Co.	80	20
Ora B.	E. C. Bond	7	½
Milwaukee	Chas. G. Hall	18	4½
City of Polson	East Side Nav. Co.	75	19
Mary S.	C. J. Enterline	20	3
Kootenai	Lincoln County	50	15
Star	W. H. Clubb and J. A. Barry	30	5

LICENSES.

Captain's Name.	On the Waters of
Eugene Hodge	Flathead Lake.
Wm. T. Taylor	" "
R. M. Bond	" "
Alfred P. Anderson	" "
G. A. Mitchell	" "
Fred A. Fletcher	" "
Argus H. MacDonnell	" "
Kenneth R. Hellen	" "
S. B. Huff	" "
E. D. Moffat	" "
Claude J. Enterline	" "
Alvin G. Rouse	" "
W. H. Clubb	" "
Wm. Schuett	" "
W. M. Cramer	" "
Geo. A. Fessenden	" "
A. K. Millett	Swan Lake.
E. C. Bond	" "
O. Denney	Lake McDonald.
Frank Kelly	" "
C. S. Gaines	Whitefish Lake.
W. F. Steward	" "
Wm. E. Headley	Bonner Lake.
Wm. Harmon	Ferry at Libby.
E. Bjornand	Ferry, Flathead River at Therriault's Crossing.
O. A. Detwiler	Ferry, Flathead River at Holt's Crossing.

Forms of certificate and license adopted by the Commission, and which conform to that required by the Marine Laws of the United States, are shown on the following pages.

STATE OF MONTANA.

CERTIFICATE NO.

PURSUANT TO THE PROVISIONS OF CHAPTER 105, SESSION LAWS of 1911, the boat WAS LAST INSPECTED ON THE day of 191..., AND THE SAME IS HEREBY AUTHORIZED TO ENGAGE IN NAVIGATION ON ANY OF THE WATERS WITHIN THE STATE OF MONTANA, AND TO CARRY NOT TO EXCEED PASSENGERS AND TONS OF FREIGHT.

The life saving equipment to be carried by said boat, as directed by the Board of Railroad Commissioners consists of same to be kept in first class condition and available for immediate use at all times. The location of life preservers when not in use must be and must be pointed out by "indicating hands." The location of life boats or life rafts when not in use must be

On date of said inspection as above, the following changes, repairs and improvements were ordered

This certificate expires on the day of 191 ..

BOARD OF RAILROAD COMMISSIONERS
OF THE STATE OF MONTANA.

Dated at Helena, Montana, ... 191.... Secretary.

STATE OF MONTANA.

CAPTAIN'S OR PILOT'S LICENSE.

Number

PURSUANT TO THE PROVISIONS OF CHAPTER NO. 105, SESSION LAWS OF 1911, ... HAVING BEEN DULY AND REGULARLY EXAMINED AS TO HIS QUALIFICATIONS TO PERFORM THE DUTIES OF CAPTAIN or PILOT OF ANY BOAT, NOT OVER TONS BURDEN, OPERATED BY POWER, IS HEREBY LICENSED TO ACT IN SAID CAPACITY ON THE WATERS OF FOR A PERIOD OF ONE YEAR FROM THE DATE HEREOF.

BOARD OF RAILROAD COMMISSIONERS
OF THE STATE OF MONTANA.

Dated at Helena, Montana, ... 191... Secretary.

PART V.

MISCELLANEOUS.

ORGANIZATION OF THE BOARD.

At the biennial election held November 8th, 1910, E. A. Morley was elected Commissioner succeeding himself, for a period of six years.

Pursuant to Section 5, Chapter 37, Laws of 1907, the Board consisting of B. T. Stanton, E. A. Morley, and D. Boyle, met on Monday, January 2nd, 1911, and perfected its organization by electing Mr. Stanton chairman, re-appointing by unanimous vote, R. F. McLaren, Secretary; O. W. Tong, Rate Clerk; S. M. Ross, Inspector; Miss Alma Mohr, stenographer, and John J. McGuinness, Official Reporter.

FORMAL PROCEDURE.

There are not a few who do not understand why the Commission does not or cannot make an order against a carrier, without formal procedure in accordance with the laws of the state and the Commission's Rules of Practice.

It is very true that a large per cent. of the complaints made to this Board are handled informally and disposed of to the satisfaction of all parties thereto. For instance, a complaint is brought before the Commission alleging unreasonableness or discrimination in rates; a preliminary investigation is made and if it appears that the complainant has shown just cause, the matter is taken up informally with the carrier. If the latter admits the allegations, and is agreeable to granting the desired concessions, the Commission issues the necessary authority for amendment to tariff, and the case is thus amicably disposed of.

However, should the carrier deny the complaint, and refuse to concur in the views of the complainant, the Commission is not empowered to Order the defendant to amend its tariffs without first giving notice of and holding a public hearing in accordance with Sections 14 and 15, Railroad Commission Law of Montana, which provide in part:

> "Provided that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place, they will proceed to fix and determine such maximum rates and classification; and they shall at such time and place, and as soon as practicable, afford to any person, firm, corporation or common carrier who may desire it, an opportunity to make an explanation or showing or to furnish information to said railroad commissioners on the subject of determining and fixing such maximum rates and classification."

Section 15 provides:

> "The said Board shall have the power from time to time to change, alter, amend or abolish any classification or rate established by it, when deemed necessary, and such amended, altered or new classification or rates shall be put into effect in the same manner as original classifications or rates."

It will therefore be obvious that in the event of a carrier declining the application of complainant, formal procedure becomes necessary before further action can be taken by the Commission, and should complainant refuse to appear before this Board in open session, then and in that event, such complainant should not and cannot expect the Commission to arbitrarily make a regulation or order acceding to his demands against the railroads.

The object of public hearings is to hear the testimony of both plaintiff and defendant, and only upon such testimony is the Commission authorized by law to act as mediator in matters coming within its jurisdiction.

Subject: Claim for Wood Confiscated.

Oscar Carlson,

vs.

Great Northern Railway Co.

In September, 1909, complainant shipped three cars of wood from Bernice, Montana, to Great Falls, Montana, the invoice price of which was $4.40 per cord, f. o. b. Bernice. None of these cars reached destination, and investigation showed that the defendant railway company had appropriated some for their own use in case of emergency, and had made a proposition to complainant to settle on basis of $3.40 per cord, which was declined.

These three cars contained 60 cords, and upon the showing that complainant had sold the same for $4.40 f. o. b. Bernice, settlement was made on that basis March 28, 1911.

Subject: Delay in Transit.

A. M. Holter Hardware Company,

vs.

Great Northern Railway, Oregon Short Line, and Gilmore & Pittsburgh Railroad Companies.

Complainant is engaged in the hardware business at Helena, Montana, and complained to the Commission on July 26, 1911, that less than carload shipments via the Northern Pacific Railway, the Oregon Short Line Railroad, and the Gilmore & Pittsburgh Railroad, destined to points in the southern part of the state, were an unreasonable length of time in transit.

Upon request of the Commission, reference was furnished to a number of such shipments which enabled us to trace movement through to destination. This investigation disclosed the weak points in the service, which were promptly brought to the attention of the carriers, with the result that under date November 14th, complainant advises "Our customers state they are now receiving freight from Helena in a very satisfactory manner."

Subject: Cars for Loading Coal.

Lakeside Coal Company,

vs.

Great Northern Railway Co.

Complainant operates a coal mine at Sand Goulee, Montana, and on December 14th, 1910, reported that it was impossible to obtain empty cars from the defendant, and that by reason of such failure to furnish equipment, they were unable to keep their mine working, or fulfill their contracts for regular delivery.

An investigation was made, and the matter brought to the attention of the railway company, with the result that under date of December 30th, complainant advises "We are now getting good service."

Subject: Oil Shipping Days.

Pure Oil Company,

vs.

Great Northern Railway Co.

The Pure Oil Company of Minneapolis, Minnesota, operates a branch station at Great Falls, Montana, and complained to the Commission on March 28th, 1911, that since they opened their Great Falls office, the defendant had restricted the number of days per week when oil shipments would be accepted, and alleged that same was a discrimination in favor of other oil companies that had branch stations at various points throughout the state of Montana, and from which points they could just as well supply their customers as from Great Falls, whereas the Pure Oil Company had but one supply point in Montana, and was therefore placed at a great disadvantage, on account of the restriction placed by the railway company limiting the receipt of such products to two days per week.

On April 8th, 1911, counsel for complainants asked that the proceedings be dismissed for the reason that the Great Northern Railway Company had agreed to amend their rules, and would receive for transportation, the products of complainant, daily.

Subject: Delivery of Express at East Helena.

Max Jacobs,

vs.

Great Northern Express Co.

The complainant in this case is a merchant doing business at East Helena, Montana, and complained to the Commission that express shipments originating at points on the line of the Great Northern Express were held at Helena, and that the said Great Northern Express Company had refused to deliver same to the Northern Express Company for forwarding to destination.

East Helena is reached only by the Northern Express Company, and it was not apparent to the Commission why such shipments were not turned over to the Northern Express at Helena. The matter was taken up with the St. Paul office, and while it is not stated just why these shipments were handled in this way, instructions were issued to the local Helena office to forward such shipments to their destination via Northern Express in future. The cause for complaint has been removed.

Subject: Non-Delivery of Coal.

Montana Coal & Iron Company.

vs.

Montana, Wyoming & Southern Railroad, and Northern Pacific Railway Companies.

Complainant operates a coal mine at Bearcreek, Montana, served by the Montana, Wyoming & Southern Railroad, and on September 22nd, 1910, consigned a car of coal to the State University at Missoula, Montana, to be transported over the M. W. & S. and N. P.

On March 16th, 1911, the M. C. & I. Co., reported to the Commission that this car had never reached its destination, and they were unable to ascertain from the carriers what had become of it, further than there appeared to be no record of the car beyond Laurel Junction.

This Commission does not exercise jurisdiction over claims for loss or damage in transit, but on investigation, it was found that this car had in some manner been consigned to a local coal dealer at Laurel, where the coal had been unloaded. The carriers made adjustment of the freight charges which had been prepaid through to the original destination, Missoula, and the receiver of the coal at Laurel settled with the Montana Coal & Iron Company for the value of same.

Subject: Hours of Labor.

W. A. Thoman,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

Complainant reported to the Commission under date Sept. 20th, 1911, that the federal nine-hour law for railroad telegraphers, was being violated by this defendant at Lombard, Mont., and stating that one man was being required to work 18 hours daily.

Investigation was made, and it was learned that complainant had been employed as a telegraph operator by the defendant at Lombard, from Sept. 7th to Sept. 18th, 1911, on which latter date, he was discharged for cause, and had left for other parts. Our inspector was unable to locate him. It was apparent that Mr. Thoman's report was unfounded, as prior to Sept. 24th, Lombard was a day and night office, employing three operators, each working eight hours, and commencing Sept. 25th, the service was reduced to 17 hours per day, covered by two tricks, the first from 8:00 to 4:00 P. M., the second from 4:00 to 1:00 A. M.

Subject: Track to Coal Mines.

H. L. Shand,

vs.

Great Northern Railway Co.

The above named complainant, President of the Windham Commercial Club, took up with the Commission on April 21st, 1911, the matter of compelling the Great Northern Railway Company to construct a track from Windham in Fergus County, to some coal properties located about four miles distant, and offering to guarantee a certain number of cars of coal each day, provided the tracks were built.

There is no statute in Montana requiring a railway company to construct a track of four miles in extent, to reach a private industry. Chapter 136, Laws of 1909, however, gives the Railroad Commission power and authority to require a railway company to construct industrial or commercial spurs to industries where there is or will be sufficient traffic to require such facilities, provided that any such industrial or commercial spur will not exceed one mile in length from headblock to end of track, same to be constructed pursuant to the usual and customary contract of that particular railroad.

Subject: Pilfering in Transit.

Lindsay & Co., Ltd.,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

This complaint reported that shipments of fruit from Helena to points on the Chicago, Milwaukee & Puget Sound Railway, and the White Sulphur Springs & Yellowstone Park Railway, were being pilfered at junction points, and alleged that this was wilfully being done to discourage business of this kind from Helena, forcing the consignees to patronize the Butte markets so that the C. M. & P. S. Ry. would get the entire haul on the business, whereas coming from Helena, it is handled by the Northern Pacific to Lombard Junction.

Investigation indicated that these petty losses were occasioned by carelessness on the part of station employes, where the shipments were left outside exposed to theft, and it was only necessary to bring the matter to the attention of the local officials, which was done, and such steps were taken as were necessary to remove the cause for complaint. It was necessary at one point to make a change in the personnel of the station force. The result has been entirely satisfactory, as there have been no further complaints since this action was taken.

Subject: Claim for Loss and Damage.

North Moccasin Live Stock Co.,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

Claim was presented for alleged loss and damage to a shipment of sheep from Lewistown, Montana, to Chicago, Ill., in October, 1910. Complaint was sent to this Commission by Messrs. Belden & DeKalb, attorneys at law, representing the N. M. L. S. Co., and while this Commission does not exercise jurisdiction over claims for loss and damage, the matter was submitted to the claim department of the defendant, and we are informed that same was declined under date Sept. 22nd, 1911, after a thorough investigation had been made, denying all responsibility for the alleged condition of the sheep upon arrival at destination due, as the complaint alleges, to excessive time on the road.

This shipment being interstate traffic, and owing to the denial of the defendant to make settlement, there was no action that could be taken by this Board, and complainant was advised that their recourse, if any, was through the courts, as the Interstate Commerce Commission has repeatedly declined to entertain claims for loss or damage in transit.

Subject: Loss and Damage to Household Goods.

Edward J. Fredericsen,

vs.

Great Northern Railway Company.

Complainant made a shipment of household goods from Hannaford, N. D. to Sand Coulee, Montana, in July, 1910, and on February 20th, 1911, reported to the Commission that his goods had been pilfered enroute, but that he had been unable to affect a settlement with the railway company.

This Commission does not claim jurisdiction over loss and damage matters, but referred the claim to the Assistant General Freight Agent of the Great Northern Railway, and we are advised that settlement was made in full, May 17th, 1911.

Subject: Loss and Damage.

A. W. Sanderson,

vs.

Northern Pacific Railway Co.

This complainant made a shipment of household goods from Wadena, Minnesota, to Hamilton, Montana, July 12th, 1910, and to cover damage sustained in transit, presented claim against the Northern Pacific Railway Company for $7.45. On April 19th, 1911, matter was referred to the Commission, stating that he was unable to secure settlement on account of being unable to produce the original bill of lading.

This Commission does not claim jurisdiction over loss and damage matters, but referred the correspondence to the office in charge of claims, and under date June 3rd, 1911, settlement was made in full, not only for the amount claimed, account of damages, but the investigation developed that the shipment had been overcharged in the sum of 14 cents making total retribution of $7.59.

Subject: Loss and Damage Claim.

P. A. Phelps,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

This complainant is a rancher residing at Baker, Montana, and on March 6th, 1911, advised the Commission that he had a claim against the C. M. & P. S. Ry. Co., of long standing, for loss and damage to a shipment of household goods.

This Commission does not assume jurisdiction over loss and damage matters, but frequently when the facts seem to indicate that the non-adjustment of claims, is due to oversight, we have brought the matter to the attention of the carrier, and in this instance, wrote Mr. R. M. Calkins, on April 4th. Complainant advises under date May 27th, that settlement has been made.

Subject: Freight Lost in Transit.

J. K. Knudson,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

A shipment made on January 12th, 1910, from Leipsic, Ohio, to the above named complainant at Roundup, Montana, consisting of one bundle of mops, the invoice price of which was $13.00, had never been received at destination. Mr. Knudson took the matter up with the Commission on November 7th, 1910, and while we do not assume jurisdiction over claims for loss or damage, the matter was referred to the local office of the C. M. & P. S. Co., and we are advised by complainant that on December 1st, he received check from the railway company, in full settlement of his claim.

Subject: Transportation by Wagon.

Dr. Chas. V. Burke,

vs.

William Miller.

Complainant in this case is a physician residing at Dupuyer, Teton County, Montana. The defendant is engaged in the transportation of persons and property by wagon between Valier and Dupuyer, Montana. Complainant alleges that the defendant refuses to transport the former, and seeks to have defendant enjoined from further refusing to carry him as a passenger on his stage route, when furnished with the necessary transportation.

Apparently complainant and defendant have had some personal differences over money matters, and as a means to force settlement, defendant has denied complainant what the latter considers his privilege, the use of this transportation, alleging that defendant is engaged as a common carrier.

It has heretofore been ruled by counsel that the Railroad Commission has jurisdiction over transportation by rail only, in view of which it was not within the province of this Board to take action on this complaint.

DODSON DAM SPUR, REMOVAL.

Upon application of the Reclamation Service, the Great Northern Railway Company constructed a track known as the Dodson Dam Spur, two miles east of Haro, in October, 1908, for the purpose of handling material for the Milk River project.

Under the regulations of the Commission, no track or spur can be removed or taken up without having the approval of this Board, and accordingly upon the completion of the work, the railray campany applied for permission to take up the track, the Reclamation people advising that they had no further use for it.

During the time that this track was in, the railway company permitted its use for such commercial loading as there was tributary to that station, and when it became known that its removal was contemplated, a protest was made by B. F. Stevens, on behalf of himself and others who had been loading at that point, hay and farm products. An investigation was made which developed that there was but a small amount of freight loaded on this track, and for the reason that when it was put in originally, it was with the understanding that it would be taken out just as soon as the project work was completed, the Commission authorized its removal.

Furthermore, there are loading facilities at Haro, only two miles west, which would not work any great inconvenience upon these shippers hauling their stuff two miles, and the desirability of taking up this track was more apparent for the reason that it was a main line switch, which is always an element of danger.

BLUFFPORT, TAKING UP COAL MINE TRACK. (Contemplated).

The C. M. & P. S. Ry. Co., made application on December 20th, 1910, for permission to take up a certain track at Bluffport which had been put in about a year ago, to serve what was expected to develop into a coal mine, and stating that inasmuch as the mine had been abandoned, the track was no longer needed.

The location of this spur is 5.8 miles west of Calabar, and 3.9 miles east of Thurlow. It is not accessible by team, and can serve no other purpose than that for which it was originally constructed. The Commission hesitated to authorize the removal of these rails without further information, and it developed upon investigation that the mine was abandoned on account of some defect in the title to the land, and it would probably be a year before a valid title could be obtained. The indications were that as soon as the question of title were settled, the property would be operated, and the track needed for the purpose originally intended: Therefore instead of taking it up as proposed by the railway company, it has been arranged to merely take out the main line switch, in order to remove an element of danger, which can easily be connected up if the operation of the property is resumed at some later date.

RAILROAD CONSTRUCTION.

In this report we have not dwelt upon "proposed" construction to any great extent; but have confined this article to a summary of the work actually done during the year, except that brief reference is made in cases where we have authentic information of railroad building in the very near future.

The Chicago, Burlington & Quincy Cut-Off, from a point near Scribner to Fromberg, Montana, referred to on Page 143 of our Annual Report for 1910, was completed and opened for regular traffic April 24th, 1911. This cut-off leaves the line of the C. B. & Q., at a point 3.2 miles south of Scribner. The distance thence to Fromberg is 29.92 miles, where connection is made with the Northern Pacific, over whose rails the Burlington operates beyond.

Via this cut-off, the distance between Cody, Thermopolis, and other Wyoming points, and Laurel Junction, is lessened 89.47 miles. The old line between Scribner and Toluca, which was largely across the Crow Indian Reservation, has been taken up.

The only actual construction during the year by the Great Northern Railway Company, is its Sun River line, which extends from Vaughn in Cascade County, to a point about one and one-half miles east of Augusta in Lewis and Clark County. It it thought that this line will be extended at some future time, following the south fork of the Flathead River and connecting with the present main line of the Great Northern near Columbia Falls.

The Great Northern Railway Company also contemplates in the near future, the construction of a branch from Lewistown west to a connection with the Billings & Northern line at Moccasin. This line has been definitely located and work will be started at an early date.

The Big Blackfoot Railway Company was incorporated in 1910 for the purpose of constructing a railroad from Bonner to Brown's Lake, six miles beyond Ovando, Montana. Grading was partially done last year, but the work was for a time discontinued. The Lumber Department of the Anaconda Copper Mining Company has about fifteen miles of logging railroad in the Camas Prairie Country, the past practice being to haul

the logs by rail to the Big Blackfoot River and from there float them to the saw mills at Bonner.

During the past year the B. B. Ry. Co., has constructed about eleven miles of standard gauge track from Bonner to McNamara's landing on the Big Blackfoot River, where it connects with the logging tracks of the lumber company, thus enabling the logs to be transported the entire distance to Bonner by rail, overcoming the difficulties heretofore experienced particularly during seasons of low water.

We are unable to obtain information as to when work will be resumed on the contemplated line from McNamara's landing to Brown's Lake.

The new line of the Northern Pacific Railway properly known as the Missouri River Railway, from Glendive to Sidney, fifty-six miles in length, is being pushed, and it is exexpected that the branch will be completed this Fall, including the steel bridge across the Yellowstone River just west of Glendive.

The Northern Pacific has during the past year, built a branch line from Manhattan to Anceney, a distance of fifteen and three-tenths miles, known as the Camp Creek Railway, serving a most productive section of the Gallatin Valley. There is a probability of further extension of this branch to the south, but the Commission has no reliable information.

The Chicago, Milwaukee & Puget Sound Railway Company has during the year, extended its line from Lewistown to Hilger, approximately eighteen miles, to serve the mining and agricultural interests of that locality.

The following table shows the railroad mileage in Montana, of the various roads:

GREAT NORTHERN.	Main Line.	Branch Line.
From Dakota Line to Idaho Line	691.3	
" G. N. Jct. to Great Falls	222.9	
" Great Falls to Shelby	99.9	
	1014.1	
From Bainville to Plentywood		53.4
" Pacific Jct. to Great Falls		119.0
" Great Falls to Butte		171.7
" Armington to Neihart		38.2
" Gerber to Stockett		7.8
" Lewis to Sand Coulee		1.6
" Great Falls to Black Eagle		4.4
" Vaughn to Augusta		40.6
" Virden to Sweetgrass		36.3
" Columbia Falls to Marion		38.2
" Kalispell to Somers		11.1
" Rexford to Gateway		9.8
		532.1

NORTHERN PACIFIC.	Main Line.	Branch Line.
From Dakota Line to Idaho Line	781.2	
" Logan to Garrison via Butte	121.9	
" DeSmet to Paradise via St. Regis	93.3	
	996.4	
From Glendive to Sidney		56.0
" Laurel to Red Lodge		44.0
" Silesia to Bridger		19.2
" Mission to Wilsall		23.0
" Livingston to Gardiner		54.1
" Manhattan to Anceney		15.3
" G. N. Trans. to Elkhorn		22.7
" Rimini Jct. to Rimini		16.1
" Clough Jct. to Marysville		12.4
" Sappington to Norris		20.6
" Harrison to Pony		6.3
" Whitehall to Alder		46.1
" Drummond to Philipsburg		25.9
" Missoula to Darby		64.1
" St. Regis to Lookout (Idaho Line)		38.2
		464.0

CHICAGO, MILWAUKEE & PUGET SOUND.	Main Line.	Branch Line.
From Dakota Line to Colorado Jct.	520.0	
" Cliff Jct. to Idaho Line	214.0	
	734.0	
From Harlowton to Lewistown		62.4
" Lewistown to Hilger		18.0
		80.4

CHICAGO, BURLINGTON & QUINCY.	Main Line.	Branch Line.
From Wyoming Line to Huntley	105.0	
" Frannie Jct. to Fromberg		29.9

OREGON SHORT LINE.	Main Line.	Branch Line.
From Silver Bow Jct. to Idaho Line	125.4	
" Idaho Line to Yellowstone		9.5

	Main Line.	Branch Line.
BUTTE, ANACONDA & PACIFIC.		
From Butte to Browns	31.8	
" Stuart to Anaconda		8.4
MONTANA, WYOMING & SOUTHERN.		
From Bridger to Washoe	25.0	
YELLOWSTONE PARK RAILWAY.		
From Chestnut to Cook's Mine	10.4	
GALLATIN VALLEY RAILWAY.		
From Bozeman to Three Forks	38.4	
" Bozeman Hot Springs to Salesville		4.7
" Belgrade Jundction to Belgrade		5.2
		9.9
WHITE SULPHUR SPRINGS & YELLOWSTONE PARK		
From Ringling to White Sulphur Springs	22.9	
MONTANA WESTERN RAILWAY		
From Conrad to Valier	20.2	
GILMORE & PITTSBURGH RAILROAD.		
From Armstead to Idaho Line	37.0	
BIG BLACKFOOT RAILWAY.		
From Bonner to McNamara's Landing	11.0	

SUMMARY.

	Main. Line.	Branch Line.	Total Miles.
Northern Pacific Railway	996.4	464.0	1460.4
Great Northern Railway	1014.1	532.1	1546.2
Chicago, Milwaukee & Puget Sound Ry.	734.0	80.4	814.4
Chicago, Burlington & Quincy R. R.	105.0	29.9	134.9
Oregon Short Line R. R.	125.4	9.5	134.9
Butte, Anaconda & Pacific Ry.	31.8	8.4	40.2
Montana, Wyoming & Southern R. R.	25.0		25.0
Yellowstone Park Railway	10.4		10.4
Gallatin Valley Railway	38.4	9.9	48.3
White Sulphur Springs & Yellowstone Park Railway	22.9		22.9
Montana Western Railway	20.2		20.2
Gilmore & Pittsburgh R. R.	37.0		37.0
Big Blackfoot Railway	11.0		11.0
Total	3171.6	1134.2	4305.8

SESSION LAWS, TWELFTH LEGISLATIVE ASSEMBLY DIRECTLY OR INDIRECTLY AFFECTING COMMON CARRIERS.

1911.

CHAPTER 21.

"An Act to Amend Section 1736 of the Revised Codes of 1907, relating to Hours of Labor."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That Section 1736 of the Revised Codes of 1907 be, and the same is hereby amended to read as follows:

Section 1736. The Period of Employment of working men in all underground mines or workings, including railroad or other tunnels, shall be eight (8) hours per day, except in cases of emergency where life and property is in imminent danger.

Section 2. This Act shall be in full force and effect from and after its passage and approval.

Approved February 11, 1911.

CHAPTER 29.

"An Act defining the liability of Persons or Corporations operating any railroad in this State, for Injuries received by Employes thereof, or in consequence of the death of any such employee, by reason of negligence, and to declare void Contracts, restricting such liability."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Every person or corporation operating a railroad in this state shall be liable in damages to any person suffering injury while he is employed by such person or corporation so operating any such railroad, or, in case of the death of such employe, instantaneously or otherwise, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employe; and, if none, then of such employe's parents; and, if none, then of the next of kin dependent, upon such employe, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employes of such person or corporation so operating such railroad in or about the handling, movement or operation

of any train, engine or car, on or over such railroad, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment.

Section 2. In all actions hereafter brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this Act, the fact that the employe may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe; Provided, that no such employe who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such person or corporation so operating such railroad of any statute enacted for the safety of employes contributed to the injury or death of such employe.

Section 3. An employe of any such person or corporation so operating such railroad shall not be deemed to have assumed any risk incident to his employment when such risk arises by reason of the negligence of his employer or of any person in the service of such employer.

Section 4. Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any such person or corporation so operating such railroad to exempt itself from any liability created by this Act shall, to that extent, be void; Provided, that in any action brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this Act, such person or corporation may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employe, or the person entitled thereto, on account of the injury or death for which said action is brought.

Section 5. This Act shall be in force and effect from and after its passage and approval.

Approved Feby. 16, 1911.

CHAPTER 53.

"An act to prevent drinking of intoxicating liquors upon passenger trains, extending police power to conductors and prescribing penalties."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Any person who shall drink any intoxicating liquors publicly as a beverage upon any train carrying passengers, except in the Buffet, Sleeping or Dining Cars, or who shall be intoxicated upon any such trains operated upon any railroad in the state of Montana, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding Five Hundred ($500.00) Dollars, or by imprisonment in the County Jail not exceeding six months, or by both such fine and imprisonment.

Section 2. Police power is conferred hereby upon every conductor of a railroad company engaged in operating trains upon lines of railway in Montana, and it shall be the duty of every conductor while upon duty upon any train or car used for the conveyance of passengers, to arrest every person who shall in his presence, or to his knowledge, violate the provisions of Section One of this Act, and to deliver him or them to a policeman, constable, sheriff, or other peace officer at any station where such officer may be found, and it shall be the duty of such officer to make complaint against said person or persons, and a complaint made on information and belief of said officer shall be sufficient.

Section 3. That any justice of the peace in any county through which said train shall pass, or on any division of such railroad, shall have jurisdiction of said offense.

Section 4. It shall be the duty of every Railway Company, operating in this state, to post conspicuously in each passenger car such extracts from this Act as shall in the judgment of the Board of Railway Commissioners be necessary to advise the public of the existence of this Act.

Section 5. All Acts and parts of Acts in conflict herewith are hereby repealed.

Section 6. This Act shall be in full force and effect sixty (60) days from and after its passage and approval.

Approved Feby. 25, 1911.

CHAPTER 108.

"An Act to permit railroad companies to carry free, or at reduced rates, persons and property in certain cases."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That nothing in the provisions of Chapter 4 or 5, Title VIII, of the Political Code, Revised Codes of Montana of 1907, or in any of the other provisions of the laws of Montana, shall be construed to prevent, or shall prevent, the carriage or storage or handling of property free, or at reduced rates for the Government of the United States, or of the State of Montana, or the owner or owners of any Fish Hatchery, within this State, or of any anglers' association organized and existing therein, whenever such property is being used for the exclusive purpose of stocking or planting with fish or fish eggs the waters within the State of Montana; and nothing therein shall be construed to prevent, or shall prevent, the issuing of free transportation to, or the free carriage of, or selling tickets at reduced rates to, any and all persons while actually engaged in transporting fish or fish eggs for stocking or planting the waters of this state with such fish or fish eggs.

Section 2. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and approval.

Approved March 6th, 1911.

CHAPTER 136.

"An Act to prohibit and regulate the issuance of reduced or free transportation by common carriers, and providing penalties for violation thereof."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. No common carrier of passengers shall directly or indirectly issue, furnish or give any free ticket, free pass or free transportation for the carriage or passage of any person within this state except as permitted in section 2 of this act. Nor shall any common carrier in the sale of tickets for transportation at reduced rates discriminate between persons purchasing the same, except the persons described in Section 2 of this act. The words "free ticket," "free pass," "free trans-

portation," as used in this act shall include any ticket, pass, contract, permit or transportation issued, furnished or given to any person by any common carrier of passengers for carriage or passage, for any other consideration than money paid in the usual way at the rate, fare or charge, open to all who desire to purchase.

Section 2. The persons to whom free tickets, free pass, free transportation and discriminating reduced rates may be issued, furnished or given are the following, to-wit: (a) The officers, agents, employees, attorneys, physicians and surgeons, of such common carriers of passengers; (b) to the families of the persons included in subdivision "a" thereof; (c) the general officers of any such common carrier; (d) employees of sleeping car and express car companies, and linemen of telegraph and telephone companies, railway mail service employees, post office inspectors, custom inspectors and immigration inspectors, newsboys on trains, baggage agents; (e) persons injured in wrecks, and physicians and nurses attending such persons; (f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitious visitation; (g) necessary care takers of live stock, vegetables and fruit, including return transportation to forwarding station; (h) the officers, agents, or regularly accredited representatives of labor organizations, composed wholly of employees of railway companies; (i) inmates of homes for the reform or rescue of the vicious or unfortunate, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents of such homes; (j) superannuated and pensioned employees and members of their families and widows of such members; (k) employees, crippled and disabled in the service of the common carrier of passengers; (l) policeman and firemen of any city, wearing the insignia of their office within the limits of such city; (m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and ellemosynary work; (n) indigent destitute and homeless persons, while being transported by charitable societies or hospitals, and necessary agents, employed in such transportation; (o) school children

to and from public or parochial schools; (p) the Railroad Commission of Montana and its necessary employees, while traveling on official duty. The provisions of this act shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes or free transportation may be furnished or given under the provisions of this section. Nothing in this act shall be construed to invalidate any existing contract between a street railway company and a city where a condition of a franchise grant requires the furnishing of transportation to policemen, firemen, and officers while in the performance of official duties.

Section 3. Any common carrier, its officers or agents or representatives, violating any of the provisions of this act shall be fined in the sum of not less than ten dollars ($10.00) nor more than three hundred dollars ($300.00) for each offense and any person other than the persons excepted in section 2 of this act who accepts or uses any free ticket, free pass or free transportation for carriage or passage within this state shall be subject to a like penalty.

Section 4. All Acts and parts of Acts in conflict herewith are hereby repealed.

Section 5. This act shall be in full force and effect from and after its approval by the Governor.

Approved March 10th, 1911.

CHAPTER 141.

"An Act imposing a license tax on companies operating sleeping cars."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Every person, association or corporation engaged in the business of operating sleeping cars carrying passengers from one point to another within the state of Montana shall pay into the state treasury on or before the first day of January of each year a license tax of one hundred dollars for each car used by it in the conduct of such business.

Section 2. Every such person, association, or corporation shall annually, on the 31st day of December of each year, file in the office of the state treasurer, a statement of the number of such cars used by it during the year preceding in the conduct of such business, and the names of such cars, so far as

the same have names, which statement shall be verified by the oath of some officer of the corporation, testifying of his own knowledge as to the facts therein stated.

Section 3. This act shall be in force and effect from and after its passage and approval by the Governor.

Approved March 11th, 1911.

INSPECTION TRIP.

(Commission's Views on Fast Schedules).

Commencing June 5th, 1911, the Commission has made a personal inspection of practically every mile of railroad within the State of Montana, accompanied by representatives of the operating and traffic departments of the various roads. The advantages of such a trip can be obtained in no other way. The Commission is thereby afforded an opportunity to view the improvements and betterments of the carriers' property, and discuss the merits thereof with the officials directly in charge of the work, on the ground where the physical conditions present themselves.

The members of the Board are, at the same time, enabled to glean information from all parts of the state, as to commercial and agricultural conditions, which have a direct bearing on the many applications made to the Commission to compel the railroads to provide depots, stock yards, unloading platforms, warehouses, etc., at points where such facilities may or may not be warranted at the present time. In all such matters, the interests of both the railroads and the people must be carefully considered to determine what is best and to what extent the demands of the carriers' patrons are justified. In no better way can the Commission be informed than from personal knowledge obtained on a tour of inspection in company with the railroad people.

It is of interest to note the efforts that have been put forth in the past few years by the railroads, and the immense amount of money required, to bring the properties up to higher standard of efficiency. Many miles of double track have been laid in districts where traffic is the heaviest. Old rails have been replaced by new of a heavier type; many hundreds of miles of track have been ballasted with gravel; temporary bridges have been "filled" or re-placed with steel and concrete structures,—permanent work; all of which permits of faster schedules, made necessary by competition and the demands of the people.

This Commission is not in favor of fast running. Many serious accidents, the cause of which is "unknown," are unquestionably due to excessive speed. For this the railroads are not at fault. The traveling public, the shipper, and the receiver of goods, all demand quick delivery and if one railroad

does not or cannot furnish as expeditious service as its competitors, that railroad soon finds that its business is diverted to the other routes because "they make the time." Railroad management is adverse to fast running; not only because it entails a decided element of danger but on account of the increased cost of maintenance of road-bed and track as well as power and equipment. The management however, must defer to the demands of the people for faster service, if he is to get a share of the business, and when the derailment of "unknown" cause happens, there are few who stop to think that the people are responsible.

This Commission desires to go on record as being decidedly opposed to high speed, particularly on passenger trains, the derailment of which might mean the loss of many lives. Better to go a little slower on the railroad and save a few hours in some other way.

ELECTRIC HEADLIGHTS.

It is now nearly three years since the Eleventh Legislative Assembly enacted a law requiring all locomotive engines, except those engaged regularly in the switching of trains, to be equipped with electric or other headlights of not less than fifteen hundred candle power, without the aid of a reflector; said act became effective February 16th, 1910, one year after its passage.

This law has been compiled with by all railroads operating within the state, and practically every locomotive engaged in road service is provided with an electric headlight of the required specifications; the exceptions being an occasional engine here and there regularly assigned to a daylight run.

The primitive views of the Commission on the use of the electric headlight, are shown on pages 275-6-7 of our 1909 annual report. At that time the electric headlight was not in general use in Montana; passenger engines only having adopted them, not as a legal requirement, but of the carriers' own volition. This limited use afforded the employes of the railroads an opportunity to judge of its advantages or disadvantages, and after more than three years, succeeded in the enactment of the present "Electric Headlight Law," which bespeaks the verdict of the railroad employes actually having to do with the movement of trains and engines.

To equip every locomotive in the state, operating approximately four thousand three hundred miles of railroad, with electric headlights, meant the expenditure by the railroads of no small amount, and naturally the measure before the Eleventh Assembly met with much opposition. Perhaps the strongest contra-argument put forth by the railroad interests was the danger and undesirability of a light so bright as to cause confusion in signals the position of trains met or passed, and the uncertainty of distance as viewed from the cab of an engine. Whether or not these objections were wholly or partially theoretical, we do not find in our records one instance during the past twenty months (since this law went into effect), where an accident has been reported to the Commission, the cause of which has in any way been attributed to the use of the electric headlight. This would seem to indicate that there was in 1909 unnecessary cause for alarm.

As stated in our last report. The Commission has from

time to time obtained the ideas of engineers (most competent to express an opinion), and if these men are to be the judges, there is absolutely no question as to the advantages thus obtained. One engineer speaking on the subject recently said: "I didn't say much at the time (meaning in 1909) because, well, you know, but just the same there is nothing to it; the electric headlight is as far ahead of the old style lamp as a self-binder is ahead of a scythe—believe me."

It must be a good thing.

TWENTY-THIRD ANNUAL CONVENTION, NATIONAL ASSOCIATION OF RAILWAY COMMISSIONERS.

The twenty-third annual convention of the National Association of Railway Commissioners convened in the offices of the Interstate Commerce Commission, at Washington, D. C., October 10th, 1911, to discuss matters of common interest; to confer and co-operate with other state commissions and with the Interstate Commerce Commission, and to recommend and adopt, so far as possible uniform practices in the regulation of common carriers. This Commission was represented by E. A. Morley.

Space will not permit of a verbatim report of matters considered and reported upon by the various committees. We wish to say, however, that the question of express rates and express service was given a great deal of consideration, and in order that a complete understanding may be had of the altitude of the committee on this subject, the full report is printed herewith.

Report of Committee on Express Rates and Express Service, October, 1911.

"Your Committee on Express Rates and Express Service, not having been named until some months after the last convention adjourned, has found it impossible in the limited time to satisfactorily complete the work assigned to it. The committee met early in the summer and concluded the most practical way to undertake the work required of it would be to appoint a sub-committee and delegate to this committee the matter of securing such testimony as seemed desirable or possible with instructions to prepare a report to be made by the committee. This course was followed, and meetings were held in Chicago, giving public notice of the time and place where meetings would be held, so that all parties who desired to appear might be present. Many parties appeared before the committee representing the public on one hand, and the transportation companies on the other, including both express and railroad companies. Opportunity was given for all parties to present such pertinent information as they might desire. With the limited time and opportunity afforded your committee, it has not been deemed practicable, at this time, to submit any definite conclusions. The purpose of this report is to pave the way for a continued investigation. A brief

statement of the complaints registered before the committee may be stated in the following language:

1. Many complaining that the present graduate scale now in use by the several express companies throughout the United States is very unfair, unreasonable and discriminatory; that the relation between the rates for carrying packages under 100 pounds and the regular hundred pound rate is manifestly unfair.

2. It was uged that certain conditions contained in express company receipts are unfair to the shipper, for instance, such as requiring a claim to be filed within sixty or ninety days, the general belief being that at least one hundred and twenty days should be allowed; also objecting to the provision in the receipt setting up no liability in cases where articles are not properly packed or are fragile claiming this works a hardship on shippers; and petitioning that express companies should establish a central claim office, where all claims might be sent for settlement.

3. There seemed to be a strong belief that stock of express companies should not be owned or controlled by another express company or by any railway company.

4. Complaint was made as to the unfair classification; holding that special and general special rates bear manifestly unfair relation to the merchandise rates.

5. Serious objection was made to the present practice of express companies in the matter of routing shipments; objecting to the practice of companies routing shipment over their own line when many times by routing it jointly over other connecting lines much time and distance might be saved, often to the great advantage of the shipper.

6. In the matter of refunds, it was urged that express companies should be required, in all cases, to give notice to the consignee, in cases where refunds of any character should properly be made. In this connection, it was urged that proper notice should always be sent to consignee in case a shipment was lost in transit or refused at point of destination.

7. It was urged that express companies should be required to furnish those entitled to the same with a receipt, and that in all cases, the receipts should show, among other things, the rate charged.

8. Many claim that the express companies should be re-

quired to furnish tariffs to shippers, in the same manner that railway companies furnish shippers with tariffs.

9. The very general opinion among those who testified seemed to be that express companies were not justified in meeting the postal rates charged by the Government for packages of four pounds and under claiming that the service rendered by the express companies was more costly to the companies and more valuable, and of greater value to the public than the cost of mail service, and that the low rates charged undoubtedly influenced the companies in making higher rates on other shipments, resulting in discrimination.

10. The conviction seemed to be very strong that the rates charged by the express companies, particularly the merchandise scale and the graduate scale, are unreasonably high.

Your committee respectfully suggests that the many questions involved in the subject under discussion might be treated under the following heads:

First Subject.

"Upon what basis should an express company be allowed to earn a revenue?" Should its earnings be upon the amount invested in real property and equipment used in operation only or is it also entitled to an additional return, as has been sometimes contended, for the personal service it renders to every patron in the same manner as does the district messenger service? In consideration of this question, it becomes important to determine how far the capitalization of these companies must be considered, having reference to what investigations have in fact been made. It may also be stated as a fact that a considerable part of the property devoted to the public use has been charged to operating expenses, which means the public itself paid for the property. Upon the proper answer to this question, must depend the future action of all regulative bodies, and probably is the most serious question and one deserving the best thought of all members of our convention. We will first take up the basis for interest charges. Under the law, public utilities are, under normal conditions, entitled to rates that will cover reasonable amounts for operating expenses, including returns upon a fair value of the property used and necessary in serving the public. In other words, the law makes the fair value of the property used, the amount upon which public utilities are entitled to a reasonable

rate of return for interest and profits. An express service is properly a railway service, an express company being merely the agent of a railway company, and as it is established that railway companies are public utilities, it can be reasonably argued that express companies occupy the same relation. Even in the absence of legislation and rulings upon the subject, it would seem that the amount that should be included in the express rates for interest and profits should not exceed a reasonable rate upon the fair valuation of the combined property of railway and express companies that is devoted to public use In industries such as public utilities in the service of which public interests are directly involved, it is necessary that both interest charges and charges for operation should rest upon sound economic bases. Such bases are found in reasonable outlays and charges to both the capital and operating expense accounts. In other words, they are found in costs under normal conditions and as ordinarily determined. In competitive industries less intimately connected with public interests, and where conditions are regulated by natural forces, it is sometimes customary to measure profits by the earnings or the earning value. In such cases, this practice may be legitimate, but in monopolistic industries, on the other hand, the situation is different. In such industries prices and conditions are not, except within exceedingly broad limits, controlled by natural forces, but subject to the will of the management, as private interests under such conditions often come in conflict with public interests. Private control has also often been found unsafe and dangerous. It is for these reasons mainly, that public regulation has been found necessary in the case of public utilities. Here such regulation occupies the same position as does competition in competitive industries. In the former, conditions are determined in the light of public as well as private interests. Here it is as a rule found that the interests of all are best subserved when the utilities shall permit such rate of returns on the amounts legitimately and economically invested in the business as will just about bring the necessary capital and business ability in this field. The amount of the investment can be determined either from the records or from the cost of reproducing the plant and the business. The rate of return can likewise be obtained from the investment market and of conditions generally. These are simply questions

of fact, and it is due to the various Commissions to find these facts. The propositions thus advance are sound and in line with public interests. They can be considered both upon theoretical and practical grounds

"Basis for Rates."

The rules which cover interest charges also apply to other charges or to rates. That is, express companies or common carriers are entitled to rates for their services that cover reasonable amounts for operating expenses, including returns upon a fair cost, that is, the value of the property necessarily employed. Under present conditions, this means that the express rates should ordinarily be high enough to cover the operating expenses of the railways for transporting express matter as well as a reasonable amount for interest on the value of the property and facilities used for this transportation, and that in addition to this, the rates of the express must also cover reasonable amounts for operating expenses of the express companies, and for interest charges on a fair value of the property necessarily used by them in the service. In other words, express rates must cover two separate sets of operating expenses, and two separate sets of interest or property charges, one in each case for the railways and one in each case for the express companies. This classification is not materially affected by the fact that the charges of the former appear as a lump sum instead of in detail in the records of the latter.

In connection with the freight transportation service, it has been further ruled that the cost of transportation thus established should be borne by the various articles and commodities transported somewhat in proportion to their value, the cost of handling them, the risks involved therein, etc. The law and the rulings under it has thus established a so-called "cost of service theory" of rate making under which articles of higher value are made to contribute relatively more to the income of the carriers for interest and profits than articles of lower value. Under this theory the higher profits contributed by the former or higher priced articles is as much a part of their cost of transportation as is the case for the relatively lower profits that is borne by the lower priced ones. Under this theory no articles should ordinarily be transported at rates that are so low as not to leave something above the operating expenses for interest on the investment of the carrier. If trans-

ported at a lower cost than this, they become a burden upon the rest of the traffic. This should be avoided except in cases where required by public interests. The basis for rates or for charging that has thus been briefly outlined, is in fact the so-called "cost of services" basis for rates.

In order to fix rates upon the cost basis, it is necessary to determine the approximate cost per unit of traffic as well as to weigh these costs for each class of the traffic in proportion to value of the articles contained in each of these classes. In short, the theory of rate making that applies to railway freight would also in the main seem to apply to the express traffic. For rate making upon this basis, an immense amount of data and a great deal of labor are required. To go into details in these matters, is, of course, out of the question.

One thing that is required to that end is a classification of articles and commodities in which value and bulk in proportion to weight, as well as other characteristics has been carefully considered. Such a classification of the goods in the main obtains in the freight service, but only to a limited extent in the express service. Another requirement is likely to be an appraisal of the property involved and a determination of the proper rate of return thereon. Then follows apportionments of the operating expenses including interest charges between the various departments of the traffic, and the further apportionment of these expenses for each department between the cost of handling the traffic at the terminals and the cost of moving it between the terminals. In addition to this, full statistics should be had showing by classes of goods in the loaded cars, the number of tons of freight, the average loading per car and other facts along these lines. From these statistics when taken in connection with the total terminal cost, it is possible to compute the terminal cost per unit of traffic with a considerable degree of accuracy. In order to compute the cost per unit of the movement expenses, it is necessary to have the total movement expenses and besides this, the loaded and empty car mileage, the tons carried one mile, the average length of the haul and other facts for the line as a whole and in many cases for each class of traffic. In addition to this, there should also be statistics showing the average weight per car alone of the various kinds of equipment, the revenue obtained from the various classes of traffic and the ordinary

data that are usually presented in the annual reports.

With data of this kind at hand, it is possible to compute the average cost per unit of both the terminal and movement expenses under various kinds of loading per car as well as for each class of traffic. These costs per unit can then be combined into rates. These rates as they then stand, however, represent costs only. In order that they may also be made to cover the next element in order of importance in rate making, namely, the value of the goods, it is necessary to weigh the cost figures as a whole or for each class on the basis of the nature of the goods. In some cases this weighing is confined to those units only which represent interest and profit charges alone. In other cases again it is applied to the entire cost The course to be observed in these processes depends very largely upon how the costs per unit were computed and on the purpose to be attained. When it is necessary to obtain a basis for intra-state rates, it is also necessary to allot the various items for each department to the state and then to separate them between the intra and the interstate traffic. It is also necessary to then obtain corresponding separations of all the other operating and traffic data that are needed in the work. What has thus been said about the cost basis applies as much to express companies as to railways.

It is perhaps unnecessary to say that the express companies will not agree with the above as the proper basis for determining the earnings and manner of establishing rates. Until within the past few years, express companies have enjoyed absolute immunity from governmental regulation and supervision, and it is perhaps too much to expect that they should not have taken advantage of this circumstance. The conclusion that this has been done is absolutely justified by a study of their scheme of rates and charges, as well as by an examination of the results of operations.

"What the Traffic Will Bear."

The express companies, however, do not make their rates as suggested above, nor do they keep or compile the data that are necessary to that end. The express traffic is neither classified so minutely as railway traffic, nor in the former classification is much of any consideration given to the value of the articles. Only two general classes are recognized, namely, merchandise, and the general specials. In the mer-

chandise class is included the general package business, which consists of an infinite variety of parcels, the weight in proportion to the value of which vary very greatly. In the general special class are included such articles as eggs, cheese, poultry, veal and such other articles as the company could not secure for transportation under the merchandise rates. In certain cases a third class called special is also made, and there are in addition to this various other classes designed to meet special conditions. One of these conditions is found where the express companies have so adjusted their rates as to meet the rates of the Postoffice Department. In classifying the express traffic, no definite standards seem to be consistently followed. This fact also seems to be true in the rate making itself. The rates seem to be based upon cost only, insofar as it is necessary that in the aggregate they must yield a profit. According to the statements of representatives of express companies, their rates are fixed primarily on "What will move the Traffic," or in other words, "What the traffic will bear," or again "On the value of the service." What these terms mean may be difficult to determine. They are often applied to so many different conditions and as a justification for so many and varying practices that their real meaning seems to be almost beyond comprehension. "What the traffic will bear," is sometimes defined as the rates under which traffic will move. "Value of the service" is usually defined as representing the difference in the price on the articles between the place from which they are shipped and the place to which they are going. These explanations, however, do not furnish proper and safe bases for rate making. The fact that the traffic may be moving is by no means a certain indication of the fact that the rates under which it moves are reasonable. If shippers generally could and would withdraw from the business as soon as any rate becomes unreasonably high, it is of course, likely that the rates that would move the traffic would not be lifted above a reasonable point. But there is hardly a shipper who is in position to do this, even if fully aware of the fact that his rates are unreasonable. Few again stop their business or withdraw from it at all. This is especially true in undertakings requiring large fixed investments in plant and equipment, which cannot be used for any other purpose. They are often better off with one or two per cent profit than with

none at all, and will therefore, continue to ship under rates that would absorb most of the profits, although they may be high enough to yield to the carrier many times the profit to which it is entitled. It is manifest that such rates are not reasonable rates, although the traffic moves under them. The difference in price between the shipping and the terminating point is an equally unsafe basis of rates. This difference usually depends upon the cost of transportation between the places involved. But this difference in price is clearly of such character that it cannot be formulated into workable standards for rates. As bases for rate making "What the traffic will bear," and the "Value of the service," seems entirely inadequate. They are indefinite and do not seem to contain anything either in the way of principles or methods that can be developed into working formulas or rate making that rest upon economic or natural forces. When more fully analyzed, they appear to be a little more than convenient descriptions in the way in which rates are made in the absence of local restrictions, when the sole aim of the rate maker is to either serve his own purpose or to so adjust rates as to obtain greatest net returns from the traffic as a whole, regardless of consequences. Efforts to extract from these theories anything that will enable the rate maker to tell just where he stands at any particular moment in his work, has usually proven fruitless. They appear to be clung chiefly as means of getting away from the "Cost of the Service" method, which is more exact and less amenable to manipulation for special purposes. These theories are admirably adapted as a cover for certain past practices, for they are so elastic that under them almost all sorts of practices can be justified. As they cannot be formulated into a standard, they usually in actual practice, and in the absence of special purpose, lead to and go no further than the so-called comparative method of rate making. The shortcomings thus pointed out in connection with the above methods are not likely to be found in the so-called cost of service method of rate-making. This method, as indicated above, consists of a proper classification of the freight in which the value and character of the articles have received due consideration in determining the approximate cost per unit of traffic, and in readjusting these cost units between the various classes and commodities on the basis of their value. Under this method,

the rate for low priced articles will be much lower than for high priced ones, but, as a rule, no rate should be so low as not to cover actual operating expenses, and, if possible, contribute at least something towards interest on the investment. This method rests upon sound economic principle, being based upon the cost of production, a factor that is always of the greatest importance in practically all price determination. Rates computed on this basis stand on about the basis with reference to the cost of transportation as that which in the long run the prices on various commodities bear to the cost of producing them. The analogy is of course not exact, but is near enough so as to illustrate the situation.

By this is not meant that the "cost method" has not its drawbacks. It is very laborious and requires technical skill in developing the details. As pointed out above, it requires an immense amount of data that is not now kept by either the railways or the express companies, but which can be obtained from their records. These facts and conditions, however, do not constitute any real objections to the method. In fact most of them would be obviated if the accounts and statistical records were kept with a view of really disclosing the facts required.

If the various commissions throughout the country would seriously, consistently and uniformly enter upon this work, it is reasonably certain that means would be found for regularly obtaining the necessary data and that a fair and equitable cost basis for rate making would be fully and satisfactorily developed. With the increasing power of the commission the need for more scientific systems is also constantly becoming more and more imperative. Efforts to obtain proper data and to develop more scientific methods of rate making than those now generally used cannot safely be delayed much longer.

The attitude of the express companies upon the questions of reasonable earnings and plan of making rates, classifications, etc., may be stated briefly and clearly by quoting from the testimony taken by the committee as follows:

Mr. Stockton representing the Wells-Fargo & Company Express, says:

> "We believe the measure of the earnings of an express company should be a reasonable profit, a reasonable percentage of its gross earnings. * * * We believe in the express business as in any other

mercantile business or commercial business, the profit is measured upon the 'turnover,' and no man ever made his profit on his property investment. You must measure on an individual rate or transaction, and that in the aggregate should not exceed a reasonable percentage of your gross earnings. We put that forward as the universally adopted basis of all commercial houses as one of the tests of every rule of common sense, and one which does not involve the thousand and one complications which must necessarily come into the record when you start to find out what the value of anything is. * * * A railroad constructing a public highway is entitled to the right to earn a fair return upon the property devoted to the public use. I repeat that that is for the construction of a public highway, that any railroad that puts their money into building a railroad is entitled, because of that investment, to a reasonable return upon the money invested, and when in addition to that, they engage as a common carrier over that railroad, they are entitled to further earn a reasonable profit on their business, and that is how an express company's profit should be measured. * * * Now, I think that relieves those Commissions of any labor of going into the question of ascertaining what the physical valuation is. It strips the matter from the subtleties around it. * * * My personal view of the matter is that the local conditions as a rule fairly reflect in the freight rates of railroad companies, and that the express rates should bear given relations to the freight rates, and it seems to me in view of this fact, that they are, in a measure, competitive, and in another measure they are partners. They handle, however, distinct classes of business which by the changes may become express or may become freight, but because of the rules between them and the similarity of carriage, I think there should be a relation with the freight rate to the express rate. * * * * No one has ever been able to make rates by a yard stick yet. Every man who has ever entered into the study must realize that neither distance, bulk, value, risk, density of traffic or density of population are reasons which can absolutely dominate and determine a rate. It must be a matter of judgment. The application of all these conditions to the matter must be in a measure reflected in the freight rate.

Q. How are you going to find the basis for that difference?

A. I should take, to a large extent, the value of the service.

Q. How are you going to measure that?

A. It is determined thus in my mind. Express rates are automatically self-regulated. I don't believe an express rate needs any regulation from any one. It regulates itself. If too high, it will not handle the business. If too low, it will attract the freight business. * * * The test is, whenever it moves all the business which it should, then it is reasonable. If not, it is not. If the shippers come in and show that their business cannot move under the rates, then your rate is unreasonable. * * * If the traffic moves freely, the rate must be reasonable."

Mr. B. P. Kerfoot, representing the United States Express Company, testified as follows:

"You know the express companies have small investments. We don't think it is fair to limit our revenue to return on that investment, the way railroads have. We feel we are entitled to a return on a percentage of the gross business we do. In other words, if we turn our capital over five or ten times a year, we are entitled to more than if only turned over once."

Second Subject.

Are the returns now received by the railway companies for carrying express matter excessive?, In other words, is the amount paid by the express companies to railway companies for transportation reasonable? Upon this question, the attitude of all the express companies, may be stated in the following language, quoting from Mr. Stockton's testimony:

"I will answer that by saying they are the best contracts we are able to get at the present time. We would like to have better ones if we could.

Q. Are the returns now received by railway companies for transporting of express matter excessive, and is not the payment on a tonnage basis a fairer manner of paying the railroad companies?

A. I should say in the first place that the payments to railroad companies I do not believe are excessive. Otherwise they would not get the contract. As to the second proposition, as to whether a contract upon the tonnage basis would be a fairer basis than a percentage of the gross earnings, I don't see that it makes much difference. All of the criticisms of the percentage contracts are purely imaginary. They do not amount to anything unless the carriers were to start in to increase the rates. The difficulty is purely

imaginary—purely a straw man put up by a lot of people to be knocked down. * * * The average express package weighs about four pounds, and the average charge per transaction is 45c. The average cost of auditing that transaction is as great as with a railroad company to audit a $4.50 transaction so that the cost of auditing is a very large source of expense to the express companies, disproportionately so as compared with the railroad companies. * * * There is no possible gain that I can see in substituting the tonnage plan. It is purely imaginary in my judgment, and why it is necessary or desirable to change the system because of a bugaboo, I am unable to say."

The attitude of the railway companies upon this question may be stated by quoting from the testimony of Mr. P. S. Eustis, representing the passenger department of the Chicago, Burlington & Quincy Railroad Company:

"It has been my conviction since 1902, when I was made traffic manager on the Burlington, that the trouble with the express business is not that the express rates are too high, but that the express company does not pay the carrier a fair portion of the gross rate for the part of the service performed by the railroad carrier. The express company gets too much.

Q. Allowing that statement to stand, would you accompany it with a statement that the railroad company needs more than it is now getting?

A. Yes sir.

Q. That the remuneration now paid the railroad company is not a reasonable amount.

A. Wholly inadequate for the service performed.

Q. Have you ever made any analysis which would go to prove whether the express business might not be paying a very reasonable sum to the railway company, and that the loss sustained, if any, might be upon the other character of business transported on the same train?

A. Upon that point, we find ourselves in a devil of a place. We have to appear on Monday somewhere to prove that we don't get enough for passenger business. On Tuesday, we appear to prove that we don't get enough for carrying mail, and on Wednesday we have to appear to prove that we don't get enough for express. We can prove all the time that we don't get enough for all three, but we find it awfully hard to prove as to any one.

Q. Have you ever undertaken to keep your books so as to be able to determine the different costs?

A. You must know that is one of these problems we cannot get at. * * * The express companies, so far, have been able to compel the railroad companies to carry their traffic at a rate which is wholly inadequate, which does not pay the railroads for the service it performs. * * * * Personally, I am more convinced by the developments of the last six months than I have been for several years before of the correctness of the point I made about four years ago, that it is inevitable that we shall organize our own express company and conduct the traffic which is on our own road. This has been seriously considered by the officials of our company for the past three years."

It is perfectly apparent from these extremely conflicting views on the part of the express and railway companies, that the question must be very carefully gone into in order to determine whether the amount now paid to railway companies is a reasonable sum for their service or not; also the character of the contract should be considered. It is perfectly apparent that any percentage relation would be materially affected in the event of any change in the rates, either the lowering or raising of the rates. If the gross sum now paid to the railway company is a reasonable sum, and as little as should be paid them, this should not be further reduced by a reduction in the rates charged by express companies, which would be the case where the percentage relation is not changed, also any increase in the express rate would increase the amount paid to the railway company. This would be manifestly unfair to impose this tax upon the public if the railway company is already receiving ample compensation.

Each transaction requires a separate individual service by the express company, but this is not true as to the service rendered by the railway company. It costs the railway company no more to transport 20 packages weighing ten pounds each than it does to transport one package weighing 200 pounds. Yet the compensation received is very much greater. One illustration may be given to make this clear. The graduate charge on a ten pound package, New York to Chicago, is 75c; the rate per hundred pounds being $2.50. Supposing in an express car leaving New York for Chicago there were 20 ten pound packages consigned to 20 separate consignees and

one 200 pound package consigned to another address. For the twenty packages the express company would charge 75c each, a total of $15.00; for the 200 pound package, it would charge $5.00. Assuming that the railway company received 50 per cent of the charges, it would receive for the 200 pounds which was transported in ten pound packages, $7.50. While from the 200 pound package it would receive only $2.50, although the weight carried and the service rendered would be identical in both cases.

Referring to the different positions taken by the express and railway companies as to the sufficiency of the amounts now paid to the railway companies as compensation, it may be interesting to record the fact that your committe is in possession of reliable data where careful investigation has been made by experts examining the cost data of two large railway companies now receiving under their contracts with the express companies 55 per cent of the gross revenue, showing that the cost of conducting the business in the case of one of these roads is 37.45 per cent of the gross amount received. In the case of the second road, the cost is 41.8 per cent of the gross amount received. This covers the entire cost included in the 116 primary accounts to which must be added 4 per cent for taxes. It is believed these figures can be sustained. On the other hand, it is fair to state that these same companies offered testimony which goes to prove that in the case of the first company the cost of doing business is 70.325 per cent of the gross amount received, and in the case of the second company, the cost is 122.952 per cent of the gross amount received. This data is presented to indicate the importance of going much further into this subject in order that reliable data may be had.

Third Subject—The So-Called Inter-Corporate Relation of Express Companies and Railway Companies.

This matter was more or less a subject of complaint before your committee, but will only be treated briefly at this time. It may be stated that the representatives of express companies resented the idea that there were any relations, either contract or mutual, existing between express and railway companies, which would in any way influence one toward the other. It must be apparent, however, when the record is read, that some very good reason can be found why the owner-

ship of stock in the different companies is distributed the way we find it. For instance, in one of the reports of the Adams Express Company, they show they own stock as follows:

$ 400,000	of the A. T. & S. F. Ry. Co.
290,000	of the B. & O. R. R. Co.
225,000	of the C. M. & St. P. Ry. Co.
317,400	of the C. & N. W. Ry. Co.
247,750	of the C. P. & St. L. Ry. Co.
191,000	of the Iowa Central.
50,000	of the L. & N. Ry. Co.
6,171,400	of the Pennsylvania R. R.

Testimony was offered before your committee showing that there are large holdings of stock of express companies held by different express companies, for instance: The Adams has $100,000 stock of the American Express Company; $650,000 of the Southern; $906,000 in the United States, and that the American owns the National entirely, and $1,000,000 of stock of the United States Express Company; that the Southern owns $111,800 in the Adams; $118,500 in the American, and $70,000 in the United States; that the United States owns $51,200 in the Wells-Fargo. We will not undertake to offer here opinion as to the influence this may have on the various companies, but it must be apparent to even a casual reader that the influence, in some cases, must be very far-reaching. As to the question of original cost of this stock, and the consideration given for the same by the various holding companies, these questions may be properly offered as subjects for further investigation, and the subject may be seriously considered as to whether or not there should not be an absolute prohibition on the part of any one express company holding, owning or controlling the stock of any other express or railway company. Furthermore, as to whether these various companies should not be confined strictly to a transportation business.

Fourth Subject—Elimination of Express Companies.

Testimony was taken by your committee as to the advisability of eliminating express companies and requiring all service to be performed by the railway companies. It is admitted that the service performed by an express company is to all intents and purposes a transportation service, and yet this may be properly divided into two parts:

1.—A pick-up and delivery service, and the other, a direct transportation service. The way the business has been con-

ducted for many years has thoroughly established the custom among the people of relying upon express companies to call for and deliver all express matter in the manufacturing and thickly settled portions of all large communities, and to the business houses in many of the smaller communities and to deprive them of this service would undoubtedly work a great hardship. It is not necessary, however, that the express companies shall continue to be common carriers in order that the public may have the advantage of this local service. Express companies might continue to act as an agent of the railway company in the matter of pick-up and delivery service, the railway company assuming and being responsible for the transportation of all commodities by express. Communities which desire to do so, might organize locally for the purpose of handling the express matter between the public and the railway companies, or the railroad companies could, if necessary, organize their own pick-up and delivery service. It is claimed by express companies that where joint traffic is handled, the railway companies would be unable to take care of the same in the matter of transfers without the aid of the express companies. This, however, it seems, could be taken care of by the plan devised to handle the local pick-up and delivery. Any plan which would accomplish that end after the same had got into working order, would undoubtedly materially reduce the cost of transportation by express. It must be apparent that as the relation stands today, between express and railway companies, and as the business is now conducted in many cases, there is necessarily a double profit paid to the carriers by the public. Upon the question of cost of pick-up and delivery service, your committee is in possession of data compiled by reliable experts with every opportunity afforded for the examination of all records to show that in certain large cities, the service of pick-up and delivery is now being performed by express companies at a cost to them of from 3.243c to 3.362c per package, and eleven smaller cities, with populations ranging from 2,620 to 18,600, the average is 2.631c per package. There are many advocates of the plan of separating the charges in such way as to relieve those who do not enjoy or care for the pick-up and delivery service from sharing in the cost of the same to the express companies. In other words, that any party who avails himself of the pick-up and

delivery service should bear the entire cost of the same, thereby reducing the rate to those who do not care for or enjoy this service. Your committee believes this plan to be a wholly practicable one, and recommends the same for the very serious consideration at the hands of this conveniton. The express and railway companies are today engaged in performing a transportation service that one company could perform just as effectively if not more so. This system has its advantages, but these are secured at an enormously high cost. This duplication of organization results in duplication of capital, wages, salaries and many other expenses. It is also a question whether the express service as performed at present may not have an adverse effect upon the fast freight service of the carriers greatly to the disadvantage of many lines of industry. There is little doubt but that in most cases the share of the railways of the express earnings are considerably greater than their earnings would amount to if express matters were shipped by freight. That under such conditions the express service with its high charges should have a bad effect upon fast freight service with its lower charges, is more than likely. Here there are evidently many opportunities for improvement. Public interests manifestly require the express service to be reorganized upon a less costly basis. The question is how can this be done. Two courses seem open. One is to divide it between the railways and the mail service. The other is to leave it entirely with the railway companies. Under the former system, the post-office department could handle packages weighing up to 12 or 15 pounds, while the railways might operate a fast freight service for the heavier packages or commodities. The postal department has offices in all parts of the country, and in all sections of the larger cities. It has city as well as rural service, and elaborate collection and distribution service. Its service extends into sections which the express companies can never hope to reach. It could perform the package service at a cost that is both actually and relatively lower than that of the express company; is a proposition about which there can be but little or no dispute. The express service today is little more than a duplication of the mail service. This duplication in the very nature of things must to a considerable extent at least be a social burden. The postal department could not only perform the package business

cheaper than the express companies, but having many more offices could also perform it more effectively; that the railways could easily make arrangements for a reasonably prompt handling of the heavier commodities at lower than the present express rates will hardly admit of much doubt. The fact is that the railways could probably assume the handling of both the heavier commodities and the lighter packages at a lower cost, and with greater satisfaction than the express companies to the public. Their present organization is nearly complete enough for this. At any rate, the additional equipment they would need to that end would not be great. There might also be savings in express car mileage, particularly for the smaller packages if the express and mail traffic were combined. This would tend to lead to improvements in the fast freight service, a matter that is of great industrial and commercial importance. It would do away with many duplications that are necessary under the present system and hence would result in many economies. The assumption of this extra work, either in whole or in part, would raise no new problems which the railways would find difficult to solve, whether the railways shall perform the express service themselves or delegate it to some agent, as they do now, is entirely a matter of expediency. There is no necessity for such delegation. Your committee has not pursued this subject far enough to enable it to arrive at any conclusion, but recommends that the importance of the subject demands that the investigation of the same be continued.

Fifth Subject—Classification and Graduate Scale.

Many of the people are of the opinion that the graduates are not based upon an equitable relation to the merchandise rates. All articles carried under what is known as "General Specials" are charged for on the basis of actual weight, this in connection with the fact that the "General Specials" are less than the merchandise rates, accentuates the difference in charges on shipments of less than 50 pounds to so great an extent that in many instances these differences appear to be glaringly discriminatory. There are those who advocate that the graduate scale is not necessary; is unfair and should not be used in the making of rates; that in lieu of the graduate scale, the rates would be made on a per hundred pound basis, the same as freight, fixing the rate at so much per hundred on a mileage

basis with a minimum. It is apparent that in the making of the classification, no consideration is given to the quality of the commodity from a transportation standpoint, that is to say, the value per pound or per package, also the comparative bulk and weight of the commodity is given no consideration whatever, but that the only consideration is what will move the business. The equity of this policy is doubtful. It seems to result in a very uncertain and apparently discriminatory relation of rates. Cheap and heavy articles, the transportation of which involves small risk, are in many instances charged for at much higher rates than other articles of greater value, and which involves much greater risk, and which occupy more space per pound. It hardly seems fair that an article worth fifty cents should be charged for at a much higher rate than another article worth ten times as much and occupying twice as much space.

Illustrating the difference between the merchandise and the general special, a 55 pound package by express, under the merchandise, costing 85c to ship by express, if classed as general specials, would cost but 41c, a little less than half the merchandise rate. To make that more plain, take a case of canned goods, for instance, weighing 55 pounds, worth $1.50, and the rate 85c. If this same package should be veal, eggs, or any other commodity classed as general specials, the rate would be 41c. In the opinion of your committee, the graduate scale and the express classification need a very complete revision in order that absolute justice may be afforded all shippers. It must be apparent that this cannot be accomplished except by a general and concerted action. All local conditions are practically the same in all parts of the country, and can reasonably demand the same rule. Your committee believes that the so-called postal rates, or the ounce rates, in Section D of the classification, are admittedly wrong and discriminatory. We believe the express companies feel this to be the case.

Mr. Stockton testified as follows:

> "The ounce rates in Section D of the classification were rates originally established by the express companies upon certain classes to stimulate business. There were certain classes of samples sent out by various dealers of small value, and which were used by salesmen to stimulate their general business. The

> government makes a rate of 1c per ounce on merchandise shipments, and the express companies made the same rate. That is a prepaid rate of 1c per ounce with a minimum charge of 15c to large shippers and dealers who were regular shippers, and the classification card was so worded that agents were not permitted to extend those rates to the general public at large. This was discriminatory, there is no question about it. These rates were made to large dealers who had a half wagon load of these small packages. They could be picked up at one time and a large part of the haul would be comparatively inexpensive, therefore, we felt we were justified in making a very low rate. When the Interstate Commerce Law included the express companies under its jurisdiction, that clause in the old classification card was one of the first things that occurred to the attorneys of the express companies as being unjustifiable discrimination, and they were told that they must either cancel those rates, or extend them to the entire public, and so the rates stand."

In the opinion of your committee, these low rates cannot be justified, and should either be eliminated or raised.

Sixth Subject—Routing of Shipments.

The present policy of express companies is to transport shipments destined to an exclusive office via the line of the company operating the exclusive office, even though there be a joint route even 40 or 50 per cent shorter, both in the matter of distance and time. To illustrate: If from a given point at which all the principal companies are represented to an exclusive Adams office, the distance be 1,700 miles and the distance via the United States Company to a junction plus the distance from the junction to the exclusive office be only 1,100 miles, the Adams will require shipments to be transported the 1,700 miles in order that it may enjoy the entire haul and will not establish joint rates via the lines of the two companies. It can readily be perceived that this policy results in an economic waste and even puts shippers to an unnecessary disadvantage and delay. It is certain there are thousands of points in the United States to which shipments are transported via round-about routes, often to the disadvantage of the shipper. One of the representatives of the express companies present at the hearing when asked the question, "Is it the position of the express

companies that the matter of routing should be left entirely to them?" said: "We think so—yes—that is our opinion. We think there should be some features of our business that we ought to be allowed to conduct, and that is one."

It is the opinion of your committee that the rules should be so modified as to permit a shipper to direct the routing of his shipment, particularly when the character of the goods shipped or the question of time are factors demanding that the most direct route be chosen.

Furnishing Tariffs and Rates to Shippers.

Your committee is of the opinion that all shippers should be able to get rates between any two points, if interested in traffic movement, by application to the local agent, and that all shippers whose business is sufficienly large to make the same reasonably necessary, should be furnished with tariffs upon application to the company.

In the matter of refunds, either on account of loss, damage or overcharge, we are of the opinion that the consignee or shipper is entitled to notice from the company within a reasonable time, and in the matter of claims, we believe that no less than 120 days should be allowed in which to file a claim of any character, and that it is unfair to the shipper to require that he furnish the original receipt when filing claim, but that only the original receipt or a duplicate of the same should be required when claim is paid. We believe the records of the express company should be kept in such way as to insure to a shipper receiving prompt notice in the event shipment is lost in transit or refused at destination. It would seem only fair that there be a reasonable limit of time fixed in which an express company should pay a just claim of any character. Your committee had shippers before it who advocated this limit should be forty days, and that in the event of failure to pay the claim within that time, a penalty of one hundred dollars should be fixed by statute, to go to the person filing the complaint. Your committee is not prepared to recommend, at this time, just the character of penalty that should be imposed or just what the time limit should be.

Conclusions.

In view of the fact that your committee has been unable to give all parties desiring a hearing opportunity to be heard,

and the further fact that both express companies and railway companies wish further opportunity to present their views upon the questions involved, your committee recommends that the whole matter be re-committed to a like committee composed of such number of members as the convention may deem best with instructions to begin at an early date, the work of completing or continuing this investigation, to the end that some definite and valuable data, and if possible, conclusions and recommendations be arrived at for presentation to the next annual meeting of this association, all of which is respectfully submitted."

COMMITTEE.

C. F. STAPLES, of Minnesota, Chairman.

After much discussion in the convention, a motion was made by Mr. Staples, Chairman of the Committee, and carried, to eliminate that portion of Fifth Subject, Classification and Graduate Scale, reading, "Your Committee believes, * * * and should either be eliminated or raised."

We regret that the expressions of opinion by the members present cannot, on account of space required, be given in this report; particularly as to the advisability or otherwise of Fourth Subject, "Elimination of Express Companies." All of the six subjects on the question of express rates and express service were fully and ably discussed in the convention. It was the concensus of opinion, however, that one year was not sufficient time in which to enable the Association to become adequately informed on so far reaching a subject. The convention realized that this matter is a most important one, and must be judiciously dealt with; that at least another year would be required for further investigation, and final recommendations. Therefore, it will be the duty of the Committee to complete the work within the next twelve months and report to the Twenty-fourth Annual Convention in 1912.

Other subjects reported upon by the various committees and dealt with by the Association are as follows: "GRADE CROSSINGS AND TRESPASSING ON RAILROADS," "RAILROAD TAXES AND PLANS FOR ASCERTAINING FAIR VALUATION OF RAILROAD PROPERTY," "UNIFORM CLASSIFICATION AND SIMPLIFICATION

OF TARIFF SHEETS," "STATISTICS AND ACCOUNTS," "LEGISLATION," "SAFETY APPLIANCES" "DELAYS ATTENDANT UPON ENFORCING ORDERS OF RAILWAY COMMISSIONS," "RATES AND RATE MAKING," "RAILWAY CAPITALIZATION," "CAR SERVICE, DEMURRAGE AND RECIPROCAL DEMURRAGE." "TELEPHONE AND TELEGRAPH RATES AND SERVICE," "POWERS, DUTIES AND WORK OF STATE RAILWAY COMMISSIONS," "SHIPPERS' CLAIMS ON COMMON CARRIERS," "RAILWAY SERVICE AND RAILWAY ACCOMMODATIONS," "ACCOUNTS AND STATISTICS OF ELECTRIC RAILWAYS." "AMENDMENT OF ACT TO REGULATE COMMERCE."

RAILROAD MAP OF MONTANA.

There are still on hand a number of copies of the Commission's Railroad map of Montana, 1910 issue, this being the latest edition printed. This map is complete with the exception that it does not show the recent division of counties, and the railroad construction for the past year. (See "Railroad Construction" as per this report).

We will be pleased to mail copy to any one desiring same, without charge, as long as the supply lasts; write the Commission.

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